XI
234

THE

LAW OF LANDLORD AND TENANT

IN THE

LOWER PROVINCES OF BENGAL,

BEING

ACT X. OF 1859, AND ACT VI. OF 1862, B. C.;

ILLUSTRATED BY NUMEROUS SELECTIONS FROM ALL THE DECISIONS OF THE COURT OF SADR DEWANI ADALAT, AND OF THE HIGH COURT OF JUDICATURE PUBLISHED UP TO DATE, DISTRIBUTED UNDER THE SECTIONS AND CLAUSES TO WHICH THEY REFER;

TOGETHER WITH THE

RULES OF THE BOARD OF REVENUE FOR THE GUIDANCE OF REVENUE OFFICERS IN THE ADMINISTRATION OF THE RENT LAWS,

REVISED, CORRECTED, AND GREATLY EXPANDED;

A NOMINAL INDEX OF CASES;

AND

A COPIOUS ANALYTICAL INDEX OF THE WHOLE.

IN THE APPENDIX ARE REPRINTED THE PORTIONS OF THE CODE OF CIVIL PROCEDURE (ACT VIII OF 1859,) WHICH ARE, BY ENACTMENT, DECLARED APPLICABLE TO THE PROCEDURE OF THE REVENUE COURTS UNDER THE RENT LAWS,—THE SPECIAL LAW FOR THE RECOVERY OF RENTS IN ESTATES MANAGED BY GOVERNMENT OFFICERS,—AND, THE LAW FOR THE SALE OF PATNI ESTATES, &c., &c.

EDITED BY THE SECRETARY TO THE BOARD OF REVENUE,

AND

Supplied, by authority of the Board,

FOR THE USE OF REVENUE OFFICERS.

Calcutta:
PUBLISHED BY MESSRS. GEORGE WYMAN AND CO.
1a, HARE STREET.
1864.

335.54
B466

CALCUTTA:
PRINTED AT THE BENGAL CENTRAL PRESS,
5, BANKSHALL STREET.

938

MEMORANDUM.

Abstracts of all important decisions of the High Court, bearing upon the Rent Laws, which have been published as this compilation was passing through the press, are furnished on separate slips. They are to be posted on the interleaves, in the places indicated by their numbers. Similar abstracts will be furnished, periodically, of all important decisions bearing upon these laws, as they are published.

No pains have been spared to make the abstracts intelligible and accurate. Officers are, however, enjoined invariably to refer to the original decision if it is accessible to them. The abstracts are intended only to guide Officers to the decision abstracted, and they should never be relied upon, unless the decision itself is not at hand.

By order of the Board of Revenue, L. P.

R. B. CHAPMAN,

Secretary.

CALCUTTA,
20th September, 1864.

TABLE OF CONTENTS.

	Page.
Act X. of 1859.	1
Act VI. of 1862, B. C.	49
Board of Revenue's Rent Law Rules.	54
Regulation VII. of 1799. Sections XXIII-XXVI.	65
Act VIII. of 1859. Section 81, &c.	66
Act VIII. of 1835.	73
Act XVIII. of 1852; Section IV.	74
Regulation VIII. of 1819.	*ib.*
Analytical Index.	83
Nominal Index of Cases quoted.	101

THE

LAW FOR THE RECOVERY OF RENTS, &c.

[NOTE —The abstracts marked (S) are of decisions by the late Court of "Sadr Dewání Adálat"; the rest are of decisions by the High Court of Judicature.]

ACT X. OF 1859.

(Received the assent of the Governor-General on the 29th April, 1859.)

AN ACT *to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal.*

Preamble.

WHEREAS it is expedient to re-enact, with certain modifications, the provisions of the existing law relative to the rights of ryots with respect to the delivery of pottahs and the occupancy of land; to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same; to extend the jurisdiction of Collectors; and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears; and to amend the law relating to distraint; It is enacted as follows:—

I. *(Repeals and modifies certain laws.)*

Ryot entitled to a pottah.

II. Every ryot is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable, a pottah containing the following particulars:

The quantity of land; and, where fields have been numbered in a Government survey, the number of each field;

The amount of annual rent;

The instalments in which the same is to be paid;

And any special conditions of the lease.

If the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery.

1. A ryot is not entitled to demand a pottah for an accretion to his jote, from a party to whom he does not pay rent for the same.—*Kishn Dhan Adhikárí, 12th August,* 1862.

Ryots holding land at fixed rates to receive pottahs.

III. Ryots who, in the provinces of Bengal, Behar, Orissa, and Benares, hold lands at fixed rates of rent which have not been changed from the time of the permanent settlement, are entitled to receive pottahs at those rates.

2. The only issue is whether the rent has been changed since the permanent settlement or not. The nature of the original pottah, granted before the permanent settlement, is immaterial; and subsequent transfers of possession do not affect the right under this Section. Nothing in Section xxxvii. Act XI. of 1859 affects the right declared by this Section.—*Rám Náth Lal Bhakat, 7th August,* 1863.—*Latíf-un-Nissa' Bibí (S) 22nd May* 1862.

3. A pottah, not being for one of the protected classes of tenures, is not good against an auction purchaser. The receipt of rent by the auction purchaser at the rate specified in the pottah, is no confirmation of an alleged mokararè tenure.—*Ra'dhákanth Dutt, 21st January,* 1864.

4. Change in the rent of a fractional part of an undivided tenure, is a change in the rent of the whole tenure, and therefore vitiates the tenure.—*Muhammad Muddín, 7th April,* 1863.

5. Eviction, though it puts an end to the ryot's possession, does not destroy this tenure.—*Latíf-un-Nissa Bibí, 26th March,* 1863.

6. In a suit instituted for a pottah at fixed rates under this Section, the plaintiff, failing to prove his right to a pottah at those rates, is not entitled to have a decree for a pottah at fair and equitable rates under Section v.—*Dúrga Mahtún, 20th March*, 1863.

7. The date of the permanent settlement must be taken to be the 22nd March, 1793.—*Bábú Dhanpat Singh, 5th May*, 1864.

8. Before the passing of this Act there was no law which prevented a zemindar from enhancing his rent, unless it were shown that the ryot held at fixed rates for 12 years before the decennial settlement; nor can the ryot rely on a pottah granted by the Collector on 24th Chyt 1194, as giving him a mokararí tenure, when the Collector had no power to grant the pottah.—*Ramesh Chandra Dutt, 4th May*, 1864.

9. The defendants having been addressed as "Mustájirs,"—HELD that they were not ryots, especially as their lands were very extensive.—*Dhanpat Singh, 5th May*, 1864.

10. The descendants of a tenant who held at fixed rates under a pottah dated subsequently to the permanent settlement, and which conveyed no hereditary right, have nothing but a right of occupancy.—*Rám Náráyan Singh, 24th June*, 1864.

If rent of land be not changed for 20 years.

IV. Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a ryot in the said provinces, has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

11. Unless a defendant specially pleads that he has held from the time of the decennial settlement at an unchanged rate, the proof of unvaried rent for 20 years raises no presumption of law in favor of an absolute exemption from enhancement.—*Riaz-un-Nissá, 30th November*, 1863.

12. If a defendant pleads that he has held at the same rent, *on a pottah of a date subsequent to that of the permanent settlement*, although upwards of 20 years, the defence annuls the presumption of law, and the case must be decided according to the pottah.—*Rajah Manmohan Singh, 12th August*, 1862.—*Rám Náráyan Singh, 24th June*, 1864.—Unless the terms of the pottah are not inconsistent with the presumption.—*Bhyrav Náth Sandyál, 2nd July* 1864.

13. A party who has failed to establish a pottah alleged to have been granted to him before the permanent settlement, cannot fall back upon the presumption described in this Section.—*Umesh Chandra Biswás, 8th June*, 1864.

14. There must have been a holding by a ryot, or by some person through whom he claims, for 20 years next before the commencement of the suit, at a rent which has not been changed during that period.—*Latíf-un-Nissá-Bibí, 22nd August*, 1862.

Ryots having right of occupancy, but not holding at fixed rates, to receive pottahs.

V. Ryots having rights of occupancy, but not holding at fixed rates as described in the two preceding Sections, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the rate previously paid by a ryot shall be deemed to be fair and equitable,* unless the contrary be shown in a suit by either party under the provisions of this Act.

15. In a suit instituted for a pottah at fixed rates under Section iii, the plaintiff failing to prove his right to a pottah at those rates, is not entitled to have a decree for a pottah at fair and equitable rates, under this Section.—*Dúrgá Mahtún, 20th March*, 1863.

16. A ryot with a right of occupancy only, has no such interest in the land as to entitle him to a share of the rent. He has merely a right to occupy the land in preference to any other tenant, so long as he pays a fair and equitable rent. He may or may not, according to circumstances, be entitled, on account of increased expenditure, to a share of any increase of proceeds, but he is not entitled to a share of the *net* proceeds or *rent* of the land.—*James Hills, 2nd Sept.*, 1863.

17. It is not necessary for the Court, in fixing one average rate on the whole area of land, to specify the rate which each particular kind of land should bear, and thus show the mode in which the average has been arrived at.—*Bábú Gurudás Roy, 11th February*, 1864.

Right of occupancy of ryot cultivating or holding land for twelve years.

VI. Every ryot who has cultivated or held land for a period of twelve years, has a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khámár, nij-jot, or sír land, belonging to

* *Vide* Cases under Section XIII, Clause 2.

the proprietor of the estate or tenure, and let by him on lease for a term, or year by year, nor, (as respects the actual cultivator), to lands sublet, for a term, or year by year, by a ryot having a right of occupancy. The holding of the father, or other person from whom a ryot inherits, shall be deemed to be the holding of the ryot within the meaning of this Section.

18. Persons possessing an interest in land intermediate between the proprietor of an estate and the ryots, are not ryots, and cannot claim under this Section.—*Mahárájá Narendra Nárâyan Bhúp, July*, 1863.

19. In a suit for ejectment in which it was admitted that the defendants had held possession as farmers for a period of forty years: HELD that, in the absence of proof that the defendants had ever themselves cultivated the lands sued for, or sublet them to actual cultivators of the soil, so as to keep alive a right of occupancy under this Section, such right of occupancy was not established.—*Brindábun Chandra Choudhary, 4th January*, 1864.

20. This Section does not apply to middlemen in possession of lands held by ryots under them, for there cannot be two parties holding the same land in separate right as ryots.—*Bhyrav Náth Sandyál, 24th December*, 1863.

21. Occupation as a trespasser, or cultivation by a trespasser confers no right and cannot be taken into account in considering whether such trespasser has occupied as a ryot for 12 years.—*Shekh Pír Baksh, 8th March*, 1864.

22. A person acquires no title under this Section by holding under a farming lease which has expired.—*Mr. G. L. Gilmore, 2nd June*, 1864.

Saving of terms of written contracts.

VII. Nothing contained in the last preceding Section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot when it contains any express stipulation contrary thereto.

Pottahs to which ryots not having rights of occupancy are entitled.

VIII. Ryots not having rights of occupancy are entitled to pottahs only at such rates as may be agreed on between them and the persons to whom the rent is payable.

23. A ryot not having a right of occupancy, is not entitled to a pottah unless he can agree with his landlord as to the rate of rent.—*Bábú Kishn Sakhá Mukharjyá, 3rd March*, 1863.

Person granting pottah entitled to counterpart engagement.

IX. Every person who grants a pottah is entitled to receive from the person to whom the pottah is granted, a kabúlyat or counterpart engagement in conformity with the terms of the pottah. The tender to any ryot of a pottah such as the ryot is entitled to receive, shall be held to entitle the person to whom the rent is payable to receive a kabúlyat from such ryot.

Exactions in excess of rent, or receipt withheld.

X. Every under-tenant or ryot, from whom any sum is exacted in excess of the rent specified in his pottah, or payable under the provisions of this Act, whether as ábwáb or under any other pretext; and every under-tenant, ryot, or cultivator from whom a receipt is withheld for any sum of money paid by him as rent; shall be entitled to recover from the person receiving such rent, damages not exceeding double the amount so exacted or paid. Receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid; and any refusal to make such specification shall be held to be a withholding of a receipt.

Form of receipt.

24. The damages mentioned in this Section are not penalties invariably to be decreed against persons withholding receipts of rent, but they are to be ascertained by an actual enquiry into the circumstances of each particular case, and never to exceed double the amount of the receipts which have been withheld. Under the provisions of this Section, the principals are liable for the acts of their agents.—*Rásmaní Devyá, 22nd April*, 1863.

Landholder not to compel the attendance of tenant for adjustment of rent or for any other purpose.

Payment of rent to be enforced only under this Act.

XI. The power heretofore vested in zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose, is withdrawn, and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them, other than are authorized by the provisions of this Act.

Damages for extorting payment of rent by duress.

XII. If payment of rent, whether the same be legally due or not, is extorted from any under-tenant or ryot by illegal confinement or other duress, such under-tenant or ryot shall be entitled to recover such damages, not exceeding in any case the sum of two hundred Rupees, as may be deemed a reasonable compensation for the injury done him by such extortion. An award of compensation under this Section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subjected by law.

Enhancement of rent of ryot holding without, or after expiry, &c., of written engagement.

XIII. No under-tenant or ryot, who holds or cultivates land without a written engagement,—or under a written engagement not specifying the period of such engagement,—or whose engagement has expired, or has become cancelled, in consequence of the sale for arrears of revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed,—shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or ryot, in or before the month of Chyt, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed. Such notice shall be served by order of the Collector, on the application, (which may be on plain paper), of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or ryot. If, for any reason, the notice cannot be served personally upon the under-tenant or ryot, it shall be affixed at his usual place of residence, or, if he have no such place of residence, in the District in which the land is situate; the mode of service of such notice shall be by affixing it at the mál kachahrí of such land, or other conspicuous place thereon, or at the village Chowrí or Chowpál, or at some other conspicuous place in the village in which the land is situate.

25. When a plaintiff in a suit for a kabúlyat under Sec. xxiii, clause 1, gets a decree, he is thenceforward entitled to receive rent at the rate specified in the kabúlyat. No previous notice is necessary to the tenant under this Section, although the rate sued for be in excess of that at which the tenant has hitherto held.—*Goursundar Choudhary, (S.)* 29*th May*, 1862.—*Ishán Chandra Roy, (S.)* 26*th June*, 1862.

26. The necessity of serving notice for enhancement under this Section does not cease, because the defendant pays a higher rent for the moiety of his tenure to a person other than the plaintiff.—*Shekh Niyámat Alí*, 12*th March*, 1863.—*Sálik Rám Upádhyáy*, 30*th June*, 1864.

27. If the rate of rent is fixed by a decree of the Civil Court in a suit for assessment upon rent-free lands, it is not necessary to serve a notice of enhancement.—*Rámjívan Bose*, 30*th March*, 1863.

28. If the notice state the area, *which it need not do*, the rent will be liable to adjustment if the area is incorrectly stated.—*Bábú Khetranáth Dás*, 5*th August*, 1863.

29. A notice of enhancement is regular and has been properly served, if it is obviously issued on the part of the landlord, though it may not bear his signature or the signature of his agent. An indigo factory situate on the lands is a "conspicuous place," and one notice served there is sufficient, although the lands be scattered.—*Hara Náth Roy*, 27*th April*, 1864.

30. If the notice do not specify the particulars prescribed in this Section, it is no notice at all.—*Rájkishn Roy*, 27*th June*, 1864.

31. But the objection arising from the informality of a notice may be waived by the under-tenant.—*Gangádhar Senápati*, 9*th August*, 1862.

32. A middleman is liable to enhancement when the productive powers of his land are increased by Government improvements, such as the erection of an embankment. HELD also that two-thirds is a fair proportion of the surplus profits of the land to be awarded to the landlord.—*Jádav Chandra Háldár*, 30*th May*, 1864.

33. Homestead lands are liable to enhancement.—*Thomas J. Kenny*, 4*th February*, 1864.

34. This Section is not applicable to farmers, even when they hold over after the expiration of their lease.—*Nathu Rám Sáhu*, 28*th June*, 1864.

Mode of contesting enhancement of rent.

XIV. Any under-tenant or ryot, on whom such notice as aforesaid has been served, may contest his liability to pay the enhanced rent demanded of him, either by complaint of excessive demand of rent as hereinafter provided,* or in answer to any suit† preferred against him for recovery of arrears of the enhanced rent.

* Section xxiii, Clause 3.
† Ibid, Clause 4.

35. A suit was brought to resist a notice of enhancement altogether, and to obtain an istimrárí pottah. The plaintiff contended that he was not liable to enhancement; that he had held for 48 years at a fixed rate; and that, under Section iv, he had a right to hold at that rate. The Judge found that he had not so held. He was right in not going into the question whether the enhancement sought to be imposed was fair or not, as that was not the point at issue.—*Gangá Prasád Singh*, 11*th November*, 1862.

36. A ryot, not having a right of occupancy, has no right to remain on the land, unless he can agree with the landlord as to the amount of rent. Such a ryot who gets notice of enhancement may wait until the landlord proceeds to levy the excessive rent by distraint, or until he brings an action for the rent specified in the notice, and then set up that the amount of rent claimed by the landlord is higher than he is entitled to demand. But he cannot take the initiative by bringing an action to set aside the notice of enhancement, and to compel the landlord to allow him to remain another year, at a less rent than the landlord is willing to take.—*Shekh Mohím*, 1*th March*, 1863.

Dependant tálúkdár, &c., holding land at fixed rent without change since permanent settlement, not liable to enhancement of rent.

XV. No dependant tálúkdár or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the ryots, who, in the provinces of Bengal, Behar, Orissa, and Benares, holds his tálúk or tenure, (otherwise than under a terminable lease), at a fixed rent which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in Section li. Regulation VIII. 1793, or in any other law, to the contrary, notwithstanding.

37. A lease which runs "You shall continue to pay the sum of Rs. 5 sicca fixed on the whole as ticca jumma of the said mouzah, every year, and having cleared the village of jungal, and having brought the lands under cultivation yourself and through others, as usual, enjoy and occupy the same, with your sons and grandsons in succession, &c.," conveys an absolute interest. The grantee and his heirs are entitled to transfer it, and to vest in the transferree the full benefit of the lease. Such a lease granted since the time of the permanent settlement, would not be binding upon a purchaser at a sale for arrears of revenue; but it is binding upon any one acquiring the zemindary rights in any other way.—*Bishwambhar Pál*, 4*th March*, 1863.

38. Section xvii., clause 3, does not apply to a tálúkdár under this Section, especially if his lease specifies definite boundaries.—*Chandra Kanth Mukharjyá*, 14th *August*, 1863.

39. The provisions of the sale law do not override this Section.—*A. T. Forbes*, 7*th December*, 1863.

Rent of tálúkdár, &c, not changed for twenty years to be *primâ facie* evidence of occupancy at that rent since permanent settlement.

XVI. Whenever, in any suit under this Act, it shall be proved that the rent at which a tálúk or other tenure is held in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such tálúk or tenure has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.

40. Change in the rent of an undivided fractional part of a tenure is to be considered as change in the rent of the whole tenure, and therefore, destroys the presumption raised under this Section.—*Muhammad Muddin*, 7*th April*, 1863.

41. The right of a tálúkdár under this Section is not affected by the position of the zemindar, e. g. his being a recent purchaser.—*Dhan Singh*, 2*nd March*, 1864.

Grounds on which ryot having right of occupancy is liable to enhanced rent.

That the rate paid by him is below that prevailing in adjacent places.

XVII. No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely:—

1. That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent:

42. The plaintiff having alleged as his ground for enhancement that the rates at which the defendant held were lower than the prevailing rates in the neighbourhood, could not claim enhancement upon the ground that the pergunnah rates were obsolete, or, in other words, that the rates of the whole neighbourhood were too low.—*Lakhan Mayilla*, 25*th March*, 1863.

43. The rates with which the comparison is made need not be those of the village in which the land is situate.—*Dakhiná Mohan Roy Choudhary*, 5*th August*, 1863.

44. The rates assessed in a case decided *ex parte* and without any local enquiry, are no good criterion for the rates assessable on other lands in the same village.—*Rámánand Mandal (S.) 27th March*, 1862.—*Nara Hari Mahant*, 12*th August*, 1862.

That the value of the land, &c., has increased independently of the ryot.

2. That the value of the produce or the productive powers of the land have been increased, otherwise than by the agency or at the expense of the ryot:

45. In a suit for arrears of rent at enhanced rates on the ground of increased value of produce. HELD that:

The enhanced rate need not bear the same proportion to the original rent as the increased value of produce to the original value of produce.

Even if the original rent were fixed upon the principle of allowing the landlord a particular portion of the produce or of the net profit, it would not follow that this principle must be acted upon in fixing the rent under the new state of circumstances, having reference to the increased value of the produce.

In a suit for enhancement of rent or to recover rent at an enhanced rate, the decree cannot be for more than the old rent in addition to the full amount of the increased value of produce proved. Within that limit, and up to the amount he has sued for, a landlord is entitled to recover whatever is *fair and equitable.*

The rent cannot be enhanced beyond the amount warranted by the ground of enhancement stated in the notice, but it may be enhanced as far as that ground warrants, to *a fair and equitable* amount.

A temporary and passing increase in the value of the produce, is not a sufficient cause for enhancement.

Any increase to the expense of cultivation must be taken into account.

A right of occupancy is a right to occupy at fair and equitable rates, but, in a revision of rent in consequence of an increase in the value of produce, a ryot with a right of occupancy is not entitled in strictness to have it fixed at a lower rate than that which a tenant not having a right of occupancy would give for it.

The following definition of rent by Mr. Malthus is the best guide the Court can lay down:—"That portion of the value of the whole produce which remains to the owner of the land, after all "the out-goings belonging to its cultivation of whatever kind have been paid, including the profit of "the capital employed, estimated according to the usual and ordinary rate of agricultural capital at "the time being."

"Out-goings" here include a fair and equitable rate of wages for the labor employed in cultivating the land, whether that of hired labourers paid out of capital, or the labor of the ryot himself or of his family, and also, when the rent is paid in money, the labor and expense of carrying the produce to market or of converting it into money.

In determining what portion of the increased value is to be added to the rent, a Collector must be guided by all the circumstances of the case. In the absence of proof to the contrary, he may take the old rent as a fair and equitable rent with reference to the former value of the produce. He must take into consideration the circumstances under which the value of the produce has increased; whether these circumstances are likely to continue; and whether the value of the produce is likely to keep up to the present average in the ensuing year. He must also consider, whether the costs of production, including fair and reasonable wages for labor, and the ordinary rate of profits derived from agriculture in the neighbourhood, have increased, and he must make a fair allowance on that account.—*Ishwar Ghose*, 24*th September*, 1862.

46. In calculating the out-goings of cultivation, interest may be allowed on the wages of labour, but not on the cost of a house, unless the provision of a house be held, as a matter of fact, to fall upon the landlord as a charge of the nature of wages so that a lower rate of wages has been allowed in consideration of a house being provided.

It is not necessary, certainly, to allow a house, and a certain number of bullocks for a certain area of land, whatever the size of a ryot's holding; less stock in proportion will probably be necessary in a larger holding.

If the value of the produce is calculated from the results of an average of years, it is an error to make any further allowance for risk of cultivation; especially if an exceptionably high rate of profit is allowed, which must in fact be held to cover all risks. Moreover, interest upon the expenditure necessary for food, and upon capital, includes such risks. The Court cannot take into consideration the fact that ryots are ordinarily compelled to borrow their capital at a high rate of interest, and a ryot thus compelled to borrow cannot be allowed a profit on his borrowed capital. One rate of profit on capital only can be allowed whether it be the property of the ryot or whether it be borrowed.

The rate of rent which a landlord has a right by law to demand, does not depend upon the size of the holding or the circumstances of the ryot.

A ryot with a right of occupancy only, has no such interest in the land as to entitle him to a share of the rent. He has merely a right to occupy the land in preference to any other tenant, so long as he pays a fair and equitable rent. He may or may not, according to circumstances, be entitled, on account of increased expenditure, to a share of any increase of proceeds, but he is not entitled to a share of the net proceeds or rent of the land.

In a suit for enhanced rent, the Court cannot fix the rent for a term of years; although a fresh enquiry is not intended to be carried on every year. When once the rent is fixed, it will continue to be the rent of the holding until fresh circumstances arise which will justify enhancement under this Section, or will entitle the ryot to claim an abatement. But in a suit by a landowner to recover rent at enhanced rates, or for a kabúlyat at enhanced rates, the rent cannot be fixed for a period of years as it can be, under Section lxxvi., in a suit by a ryot with rights of occupancy for a pottah. The difference between the two cases is this, that a right of occupancy is the right of the ryot. It does not also give the landlord a right to compel him to continue his occupation.

In this case, which arose in the district of Nuddea, the following was the account finally allowed by the High Court, though with considerable reservations in favor of the landlord :—

Produce of 16 bíghás of arable land, or, including fallow, 23 bíghás, ... Rs. 148.

Out-goings

1.	Wages of ryots, including provision of house.	43 8		
2.	Additional hired labor. ...	12 0		
3.	Feed of bullocks, and cowherd's wages.	12 0		
4.	Interest on half the above* sums for half the year at 50 per cent.	7 8		
5.	Seed, one rupee per bíghá.	16 0		
6.	Interest on the undermentioned stock† at 50 per cent.	29 0		
			„	120

Net rent for 23 bíghás ... ... Rupees 28, or per bíghá, 1Re. 3as.

* Interest is not calculated upon Rs. 7-8-0 of item No. 1 which the Judge had charged as interest upon the value of a house. The High Court disallowed the charge in that sense, but added it to the wages, because it could not be ascertained, without a remand, whether the Judge had not, in consideration of this charge, allowed less wages. The Court did not allow interest upon this item as part of the wages.

† *Stock.*

4	Bullocks at 12 Rupees.	Rs.	48 0
	Cowshed.	„	4 0
	Granary.	„	3 0
	Plough and implements.	„	3 0
		Rs.	58 0

Item allowed by the Judge, but disallowed by the High Court.

For risk of cultivation, ten per cent. on produce .. .. Rs. 15 0

James Hills, 2nd September, 1863.

47. The condition and rights of ryots whose tenures have commenced since the permanent settlement, depend, not on status, but on contract, and on laws and Regulations specifically enacted. In 1793 the zemindars were declared to be the proprietors of the lands. From 1793 to 1812, they were prevented from granting pottahs or leases to ryots for more than 10 years, and could not therefore have created ryots with hereditary rights of property in the soil. After Regulation V. of 1812, they could grant leases at any rate and for any term. By the retrospective effect of Section ii, Regulation VIII. of 1819, leases in perpetuity or for terms, granted prior to 1812, were rendered valid.

In this case it was admitted that the value of the produce had increased otherwise than by the agency or at the expense of the ryot, and that the notice required by Section xiii. had been served before the end of Chyt in the year preceding that for which the enhancement was claimed. Upon being served with that notice, the defendant had a right to quit according to Section xix. The Statute of Limitation does not give him a right of occupancy by holding for 12 years. But for Act X. of 1859, therefore, the defendant (assuming that he was not holding for a fixed term, and that his tenancy commenced since the permanent settlement), would have been liable to have his tenancy determined, and to be turned out of possession at the end of 1267 if he and his landlord could not agree as to the rent to be paid for the future. But it being admitted that he had a right of occupancy under Act X. of 1859, he was entitled to hold at a fair and equitable rate. What is fair and equitable depends, not upon the status of the ryot, but upon the value of the produce and cost of production.

After the permanent settlement and before Act X. of 1859, a right of occupancy was not acquired by a ryot merely by holding or cultivating land for a period of 12 years. When that Act created the right, Section v. declared that ryots having rights of occupancy should be entitled

to hold at fair and equitable rates, thus leaving it to the Courts to determine, in every case of dispute, what is af air and equitable rate. To be fair and equitable, it must be so as regards both parties.

In cases in which there is no contract, and to which the Statute of Limitation does not apply, the ryot cannot, by occupying and cultivating, become the proprietor of the soil, neither can he, by occupying with the consent of the zemindar and paying rent for the land to him, become entitled to the proprietorship of the soil, even though he should acquire a right of occupancy by virtue of Act X. of 1859.

The objection that the High Court, upon special appeal, had decided a matter of fact in this case, is not tenable, inasmuch as the Judge below had found the facts specially, and his finding was in the nature of a special verdict. If, therefore, in fixing the rent, he had improperly deducted certain items from the value of the gross produce of the land, the High Court had the power, on special appeal, to disallow those items.—*Ishwar Ghose, 17th March*, 1864.

(See also the minutes of the Chief Justice and Justice Sambhu Náth Pandit printed in an Appendix to the Board's Selected Cases for June, 1864.)

48. A tank dug for public use, and a garden rendered productive by the exertions and outlay of the tenants, held not exempt from enhancement.—*Lakhun Magilla, 25th March*, 1863.

49. Jangalburí tenants are liable to enhancement.—*Bábú Dhanpat Singh, 5th May*, 1864.

50. This clause must always be read with reference to the general provision of Section v. that the rent of a ryot having a right of occupancy shall not be more than is fair and equitable. In considering what is fair and equitable, the ryot should not be called on to pay to the landlord, under the name of rent, what is in fact not rent but the produce of his own labor and capital sunk in the land.—*Núr Muhammad Mandal, 31st May*, 1864.

That the quantity of land held by the ryot is greater than he has paid rent for.

3. That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

51. Does not apply to a tálúkdár possessing permanent rights.—*Chandra Kunth Mukharjyá, 14th August*, 1863.

52. When a pottah leases a certain area within defined boundaries, at a fixed rent, the excess area cannot be assessed.—*Rám Náráyan Nandí, 17th February*, 1864.

53. If a mokararí pottah is for a specified area without mention of boundaries, the landlord may assess, at fair and equitable rates, any land held by the tenant in excess of that area.—*Bipra Dás Dé, 31st March*, 1864.

54. A lease was granted for 15 bíghás of land within specified boundaries, with a condition for reduction of rent if there should prove to be less than 15 bighás: HELD that the landlord had no right to assess lands within the boundaries in excess of 15 bíghás.—*B. C. Limond, 30th June*, 1864.

When ryot may claim abatement of rent.

XVIII. Every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise,—or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot,—or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

55. A plaintiff cannot obtain a higher abatement of rent than he has demanded, even though such higher abatement be according to defendant's own allegation.—*Háradhan Banarjyá, 17th, August*, 1863.

Relinquishment of land by ryot after notice given.

XIX. Any ryot, who desires to relinquish the land held or cultivated by him shall be at liberty to do so, provided he gives notice of his intention in writing to the person entitled to the rent of the land or his authorized agent, in or before the month of Chyt of the year preceding that in which the relinquishment is to have effect. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land. If the person entitled to the rent of the land, or his agent, refuse to receive any such notice and to sign a receipt for the same, the ryot may make an application on plain paper to the Collector, who shall thereupon cause the notice to be served on such person or his agent in the manner provided in Section xiii.

56. The landlord of an utbandi ryot served notice upon him that unless he paid at enhanced rent for the ensuing year, he was to quit the land, and the ryot intimated to the landlord's agent that he would quit the land: HELD that the ryot had sufficiently complied with this Section and was entitled to quit the land.—*Mr. Thos. J. Kenny, 2nd February*, 1864.

57. A proprietor of a tenure whose name is registered in the zemindar's office, is not exempt from the payment of rent during the time he was out of possession of the said tenure, unless he can show that his ouster took place by some act of the zemindar.—*Mussamát Mohan Málá, (S.) 27th March*, 1862.

58. A landlord cannot sue a tenant for rent of land which is allowedly not in such tenant's possession, and which the landlord admits he knows has been taken by Government for a public purpose.—*Rám Kishn Dás, (S.) 26th March*, 1862.

What to be deemed an arrear of rent under this Act.

XX. Any instalment of rent which is not paid on or before the day when the same is payable according to the pottah or engagement, or, if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage, shall be held to be an arrear of rent under this Act, and, unless otherwise provided by written agreement, shall be liable to interest at twelve per cent. per annum.

59. Does not apply to a case in which the defendant is not a tenant, but a co-sharer in the estate.—*Golok Chundra Roy, 16th September*, 1862.

60. The Court is not *bound* to give interest by this Section.—*John Beckwith, 13th February*, 1863.

61. In a suit for arrears of rent, with interest, on a kabúlyat executed before this Act came into operation, interest may be allowed by the Court under this Section from the date on which this Act came into operation.—*Sindgapí, 1st April*, 1863.

Liability of ryot to be ejected for arrear due.

XXI. When an arrear of rent remains due from any ryot at the end of the Bengal year, or at the end of the month of Jeyt of the Faslí or Wiláyaty year, as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due. Provided that no ryot having a right of occupancy, or holding under a pottah the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Proviso.

62. A ryot is not liable to ejectment for non-payment of rent due for the first ten months of the year, but only on account of arrears of rent due at the close of the Bengali year. Such a matter should be noticed by the Lower Courts, whether pleaded by defendant or not.—*Rámjívan Dás, 5th August*, 1863.

63. A zemindar is not obliged to apply to the Collector, under Section xxv, for assistance to eject a cultivator, whether he requires such assistance or not. A tenant ejected by the zemindar without application made to the Collector, is not, on that account, illegally ejected, unless it is proved that the landholder took any illegal measures to eject the tenant. The mere fact of the tenant no longer possessing what he once possessed, is insufficient to show that he has been *illegally* ejected.—*Sheo Ratan Singh, 11th May*, 1864.

Liability of farmer to have his leased cancelled for arrear adjudged due.

XXII. When an arrear of rent shall be adjudged to be due from any farmer or other lease-holder not having a permanent or transferable interest in the land, the lease of such lease-holder shall be liable to be cancelled, and the lease-holder to be ejected. Provided that no such lease shall be cancelled nor the lease-holder ejected otherwise than in execution of a decree or order under the provisions of this Act.

Proviso.

64. Sections xxi, xxii, and lxxviii, of Act X. must be read together, and those parties only can be ejected under Section lxxviii. who come within the purview of Sections xxi. and xxii. Persons with a permanent or transferable interest, do not come under these Sections, and consequently Section lxxviii. does not apply to them, but a decree-holder must realize his dues from such persons by the mode enjoined in Section cv of the Act, *viz*, by the sale of the tenure, and, if that does not suffice, by the sale of any other property moveable or immoveable belonging to the debtor.—*Nand Lál Ghose, (S.) 31st December*, 1860.—*Rám Kishn Dás, (S.) 26th March*, 1862.—(See however Case 166 below.)

65. If a lease provides that, in case of default of payment of rent, the lessor is to have the power of re-entry, without expressly mentioning the mode of effecting it, the lessor is bound to exercise this power according to the provisions of this Section. But the parties may contract that there shall be a power of re-entry without applying to any Court.—*R. Solano, 23rd December*, 1862.

66. The zemindars having by their acts admitted the tenure to be transferable and mukarrarí, it is not for the High Court to declare that the tenure is neither transferable nor mukarrarí, in a suit for rent. The proper tribunal to settle those questions is the Civil Court, and not the Revenue Courts under this law.—*Bábú Dhanpat Singh, 5th May*, 1864.

67. In this case the Court recognized the transferable character, even without the consent of the zemindar, of a ryot's jote in Rungpore, though held at a variable rent.—*Digambari Débyá*, 10*th June*, 1864.

Cognizance of suits under this Act.

XXIII. 1. All suits* for the delivery of pottahs or kabúlyats,—or for the determination of the rates of rent at which such pottahs or kabúlyats are to be delivered;

68. The fact of there being, accidentally, a small arrear of rent due, is no answer to a suit for a pottah.—*Srí Rám Roy*, 22*nd January*, 1863.

69. A ryot is not entitled to demand a pottah for land, an accretion to his jote, from a party to whom he does not pay rent for the same.—*Kishn Dhan Adhikárí*, 12*th August*, 1862.

70. Proof that the plaintiff holds the land is necessary to entitle him to a pottah.—*Nidhí Dás*, 31*st May*, 1864.

71. An action to compel an auction purchaser to confirm an istimrárí pottah cannot be heard under Act X. of 1859.

The Lower Appellate Court having found the pottah of the defendant to be good, should have proceeded to try how far the pottah affected the plaintiff's rights as an auction purchaser.—*Kylás Chandra Dé*, 30*th June*, 1864.

72. A zemindar having established his right to resume lákhiráj land, can, after issue of notice to the tenants of the rates of rent demanded for the land, institute a suit under this clause to obtain the confirmation of those rates, and procure a kabúlyat in accordance therewith, but *no arrears* of rent can be decreed to him in such a suit.—*Joy Kishn Mukharjyá*, (*S.*) 13*th July*, 1861.

73. It is competent to a zemindar, after issue of notice of enhancement of rent under Section xiii., to institute a suit, under this clause, to determine the rates of enhanced rent, and to enforce the delivery of a kabúlyat at the rates determined. Whenever a proprietor is willing to grant a pottah, and tenders the same to a ryot, he is entitled to demand a kabúlyat, and to enforce that demand by a suit: the institution of the suit is in itself evidence of the tender of a pottah and demand of kabúlyat sufficient to justify the action.—*Joy Kishn Mukharjyá*, (*S.*) 31*st March*, 1862.

74. When a plaintiff, in a suit for a kabúlyat, gets a decree, he is thenceforward entitled to receive rent at the rate specified in the kabúlyat. No notice is necessary to the tenant under Section xiii., although the rate sued for be in excess of that at which the tenant has hitherto held. But, if it be so in excess, the enhanced rate will be payable only from the commencement of the year following the decree.—*Gour Sundar Choudhary*, (*S.*) 29*th May*, 1862.—*Ishán Chandra Roy*, (*S*) 26*th June*, 1862.—*Rám Kanth Choudhary*, 7*th July*, 1864.

75. It is not necessary, in an action for a kabúlyat *at an enhanced rate*, that attention should be called to this fact in the plaint. The officer deciding the case should determine the rate of rent at which the kabúlyat is to be given.—*Messrs. Cohn, Feilman, and Co.*, (*S.*) 14*th June*, 1862.

76. It is not necessary, when a defendant does not claim to be a ryot having right of occupancy, for the plaintiff to state *on what grounds* he claims a kabúlyat at enhanced rate.—*Ján Ali*, 5*th January*, 1864.

77. In a suit by a landowner to recover rent at enhanced rates, or for a kabúlyat at enhanced rates, the rent cannot be fixed for a period of years as it can be, under Section lxxvi., in a suit by a ryot with right of occupancy for a pottah. The difference between the two cases is this, that a right of occupancy is the right of the ryot. It does not also give the landlord a right to compel him to continue his occupation.—*James Hills*, 2*nd September*, 1863.

78. In a suit for a kabúlyat it must be shown that a contract existed by which the relation of landlord and tenant was created.—*Gopí Mohan Ghose*, 3*rd December*, 1863.

79. In a suit for a kabúlyat on the ground that the defendant had occupied and cultivated certain lands of the plaintiff, the defendant pleaded that he was co-parcener with the plaintiff of the lands, but he admitted that he had given a kabúlyat for some of the lands he occupied. HELD that, since, by giving a kabúlyat, the defendant had acknowleged the plaintiff to be his landlord, the onus of proving the plea was upon the defendant.—*Guru Prosád Roy* 5*th August*, 1862.

80. A person who avowedly holds and cultivates another's lands is, by the universal custom of the country, his tenant, though there may have been no express permission to cultivate on the side of the landlord, nor any express condition to pay rent on the part of the cultivator, and, while so holding and cultivating, the cultivator is bound to pay the landlord rent and to give him a kabúlyat. Though proof of tender by landlord, and refusal by tenant, of a pottah, is a necessary preliminary in a suit for a kabúlyat, it is not necessary or practicable in a suit not for a kabúlyat only, but for determination of rent and for a kabúlyat.—*Nityánand Ghose*, 20*th June*, 1864.

81. The fact of the defendants being now in possession of lands under apparently genuine title deeds held sufficient to entitle them to resist the zemindar's claim to assess them, the zemindar not having shown that the defendants had paid him rent. The Lower Courts were therefore right in referring the plaintiff to a regular suit for resumption.—*Mátangini Debyá*, 18*th March*, 1864.

* On an 8 anna Stamp; see Board's Rule IV. See also Rule VII.]

82. When a suit under this clause is met by a claim to hold at fixed rates, the issues to be determined are whether the rent of the land has been changed or not since the permanent settlement, or, if that cannot be decided, whether it has been changed or not during the 20 years preceding the suit.—*Asghar Ali Choudhary*, 23*rd June*, 1864.

83. Section 11, Regulation VIII. of 1819, only entitles a patnídár who has purchased his tenure at auction to avoid the incumbrances therein specified created by his immediate predecessor for whose default the patní was sold.—*Ishán Chandra Kar*, 18*th August*, 1863.

84. The mere fact of long rent-free possession on a service tenure gives the holder no exemption from the payment of rent when the service is no longer required or performed.—*Chandra Náth Roy*, 31*st March*, 1864.

85. A tenant is not bound to execute a kabúlyat for land held under an istimrárí pottah. If a tenant mixes up land upon which he has encroached with his rightful holding, and cannot show which is his own and which the zemindar's land, he may be assumed to have encroached upon the best land, and is liable to be assessed for it as for land of the best quality.—*Durgá Náth Majúmdár*, 5*th April*, 1864.

86. One of several proprietors of an estate held in co-parcenary can bring a suit to fix his share of the rent without a partition.—*Trylokya Charan Choudhary*, 1*st April*, 1864.—*Rám Lochan Dutt*, 13*th July*, 1864.

87. The fact of a mukararidár having, for any reason, agreed to pay an enhanced rent to one shareholder, does not entitle another shareholder to demand enhanced rent except after notice under Section 13.—*Sálik Rám Upádhyáy*, 30*th June*, 1864.

88. The rent declared to be payable by defendant in a former suit is evidence of the rent still payable, though the defendant may rebut it by proof of change.—*Chandra Kumár Roy*, 30*th June*, 1864.

89. The decision of a Collector, in the course of proceedings for the partition of an estate as to the rate of rent payable by a ryot or under-tenant, is not binding upon the ryot or cultivator, and he may question that decision in answer to a suit under this clause.—*Giridhári Singh*, 8*th July*, 1862.

90. An intervenor can appear and be heard, under Section 77, in a suit for a kabúlyat under this clause.—*Shekh Mánik Mandal*, 4*th August*, 1863.—*Ránť Khyameshwarí Debyá*, 8*th July*, 1864.

91. A Collector cannot order the insertion in a kabúlyat of a condition that the tenure shall be saleable under Regulation VIII. of 1819.—*Buzúrg Chaman*, 1*st July*, 1864.

2. All suits* for damages on account of the illegal exaction of rent or of any unauthorized cess or impost,—or on account of the refusal of receipts for rent paid,—or on account of the extortion of rent by confinement or other duress;

92. The recovery by a zemindár of a sum in excess of the rent due, by a proceeding recognized by law, is not an illegal exaction of rent under Section x.—*Devendra Náth Roy Choudhary*, 23*rd April*, 1863.

3. All complaints* of excessive demand of rent, and all claims* to abatement of rent;

93. A zemindar is entitled to a decree for arrears of rent notwithstanding that the ryot has sued for abatement.—*Harish Chandra Choudhary*, 17*th August*, 1863.

94. A suit for a declaration of plaintiff's right to pay patní rent according to the kabúlyat executed by his ancestor, and not according to the settlement made under protest from him, whereby the zemindar then in possession under a sale in execution, raised the rent on one of the villages, is not a suit for an abatement of rent under this clause, but is purely a civil contest cognizable by the ordinary Courts.—*Srí Rám Ghose, &c.*, 14*th March*, 1864.

95. A suit for abatement of rent on the part of a patnídár is not cognizable by the Collector, with reference to the provisions of Section 18, Act X. 1859.—*Mahárája of Burdwan*, 12*th March*, 1864.—*Rám Dhan Banarjyá*, 2*nd July*, 1864.

96. Ryots not having a right of occupancy can sue for abatement when they can show that they are justly and equitably entitled to it.—*Rám Chandra Bose*, 17*th August*, 1863.

97. A tenant holding under a kabúlyat, unless the terms of the kabúlyat expressly preclude it, is entitled to abatement of rent for land washed away.

Although Section 18 is confined to ryots having a right of occupancy, yet that Section was not intended to take away any right (the right of claiming abatement for land washed away, for instance) which existed by law independently of the Regulations repealed by this Act. A tenant is not entitled to an abatement to which he would not be entitled according to his lease merely by reason of the expiration of the lease, because, when he holds on after the expiration of the lease, he does so at the same rent, and on the same stipulations as are mentioned in the lease, until the parties come to a fresh settlement.—*Shekh Ináyat Ulla*, 5*th April*, 1864.

* On an 8 anna Stamp; see Board's Rule IV.

98. From this case it appears that abatement was allowed to the plaintiff on the ground of the land in his possession being less than the quantity stated in his pottah, notwithstanding a provision in his kabúlyat binding him not to make any claim on that account.—*Háramaní Chowdhráin, 5th July*, 1864.

99. Plaintiff cannot obtain a higher abatement of rent than he has demanded, even though such higher abatement be according to defendant's own allegation.—*Hárádhan Banarjyá, 17th August*, 1863.

100. A tenant not having a right of occupancy has no right to remain in the land, unless he can agree with the landlord as to the amount of rent. Such a tenant who gets notice of enhancement may wait until the landlord proceeds to levy the excessive rent by distraint, or until he brings an action for the rent specified in the notice, and then set up that the amount of rent claimed by the landlord is higher than he is entitled to demand. But he cannot take the initiative by bringing an action to set aside the notice of enhancement, and to compel the landlord to allow him to remain another year, at a less rent than the landlord is willing to take.—*Shekh Mohím, 12th March*, 1863.

101. A suit for abatement of rent and refund of excess rents paid on account of diluviated land, as provided by the lease, is cognizable before the Collector under this clause. The plaintiff's right of action in such a case accrues from the time when he is compelled to pay the rent named in his pottah without the allowance of the abatement he claims, and not necessarily from the time when diluvion takes place.—*G. R. Barry, 6th May*, 1864.

4. All suits for arrears* of rent due on account of land either khirájí or lákhiráj, or on account of any rights of pasturage, forest-rights, fisheries, or the like;

102. When rent for a particular year has been sued for and decreed, the *presumption, a rebuttable one*, arises that the rent for years prior to that for which a decree has been given, has been paid.—*Siva Náráyan Bhatácharjya, (S.) 5th September*, 1861.—*Kishn Jivan Bakshí, (S.) 21st May*, 1862.

103. The admission that, out of Rs. 11,103 due on account of three years, Rs. 9,190 have been received, affords a strong presumption that the other items in the account have been satisfied, but this presumption may be rebutted.—*Rájá Ináyat Hussain, 1st July*, 1864.

104. When a plaintiff sues for rent for 1266 and there is an arrear for 1265, if the defendant proves only a general payment without showing that such payment was in satisfaction of the rent of 1266, the plaintiff has a right to apply such part of the money as was necessary to satisfy the arrears of 1265.—*Robert Ahmuty, 22nd February*, 1864.

105. The Revenue Courts are not competent to investigate pleas of *set-off*, when the accounts which include the items on which set-off is claimed, have not been previously admitted by plaintiff, or when the matter of the set-off involves enquiries beyond the restricted jurisdiction of those Courts.—*Maulavi Abdúl Ali, (S.) 5th October*, 1861.

106. The pottah provided for the credit to the lessee of excess payments and short collections, and *of all expenses incurred in cases connected with the farm, in the Criminal Courts.* HELD that the Revenue Court could not adjudicate upon a claim to a *set-off*, under the last provision, on account of costs incurred in a case of assault by plaintiff on defendant.—*Ishwar Chandra Sáhá, 11th July*, 1864.

107. In a suit for arrears, defendant pleaded a set-off to the effect that a third party, who was his debtor, had to receive a certain amount from plaintiff on account of some other property. It was held that such a claim was no set-off at all, and that no set-off can be listened to, but what arises immediately between plaintiff and defendant.—*Párvatí Charan Pál, (S.) 11th June*, 1862.

108. Defendant pleaded that, by an understanding or agreement between him and the plaintiff, he (the defendant) was allowed to retain his rent in consideration of an expenditure by him on the plaintiff's account. HELD that the suit could not be decreed until this plea had been fully investigated.—*Joy Kunwar Dobáin, &c., 3rd February*, 1864.

109. A suit for excess rents under a lease of certain lands for the consideration of a sum of money, whereby the lessee was to pay in the Government revenue and reimburse himself from the remainder of the assets, and which provided for an annual measurement and assessment, was held to be cognizable in the Civil Courts and not under Act X. of 1859.—*Syad Sharkat Ali, 23rd April*, 1864.

110. A landlord cannot sue a tenant for rent of land which is allowedly not in such tenant's possession, and which the landlord admits he knows has been taken by Government for a public purpose.—*Rám Kishn Dás, (S.) 26th March*, 1862.

111. The fact of the tenant being dispossessed from his tenure by a third party, does not absolve him from the liability for rent to the zemindar, but the latter cannot sue him for rent, if he himself be the dispossessing party.—*Khája Abdúl Ghani, 23rd April*, 1863.

---

* For proper Stamp, see Board's Rule IV.

112. If a suit for arrears of rent for any year has been dismissed, a second suit for the same rent in which the propriety of the order of dismissal is called in question, will not lie.—*Ishwar Chandra Bose, (S.) 27th March*, 1862.

113. But the dismissal of a suit for the arrears of a particular year for default of prosecution, is not in itself a satisfaction of the claim.—*Dhanpat Singh, 23rd June*, 1864.

114. A decision in a suit for rent as to the area of land held by defendant, does not estop plaintiff from showing, in a suit for the rent of a subsequent year, that defendant held a larger area.—*Ajodhyá Prasád, 22nd July*, 1862.

115. The purchaser of a zemindary sold in execution of a decree is entitled to the rent due from the date of his purchase. If the tenants, after due notice of purchase, continue to pay to the former owner, they do so at their own peril, and cannot plead such payment in answer to the new owner's suit for rent. In this case such payments made even under an order of Court were not recognized.—*Collector of Rajshye, &c., 26th January*, 1864.

116. If a party against whom a decree of the Civil Court has been given, be not ousted from possession in execution of such decree, he is entitled to collect rents subject to account to the decree-holder for the same.—*Panchánan Banarjyá, (S.) 27th March*, 1862.

117. Plaintiff sued as purchaser of an under-tenure sold under Section cv. of this Act, in satisfaction of a decree for arrears of rent. Defendant, in reply, questioned plaintiff's title, alleging that the tenure was purchased by private sale before the sale in execution, and that he, defendant, held under the representative of the private purchaser. HELD that this objection could not be entertained.—*Messrs. Cohn, Fielman, and Co., (S.) 14th June*, 1862.

118. A tenant who has executed a kabúlyat cannot meet a suit under this clause by questioning his landlord's title.—*Mussamát Purniá, 24th June*, 1864.

119. A plaintiff brought a suit for arrears of rent against two parties, one as the real, and the other as the ostensible proprietor of an under-tenure. The Court considered that the Revenue Courts, under Act X. of 1859, have full power of determining, in such a case, whether one party or another is the real lessee.—*Golok Chandra Bábú and others, (S.) 26th June*, 1862.

120. A landlord cannot hold both the nominal and the real lessee liable to rent, but must make his election. If he proves the nominal lessee to be simply an agent for another, he can proceed against that other, unless he elect to sue the agent on his written contract, in which case he cannot go against the principal.—*Hírá Lál Bakshí, 11th November*, 1862—*Shekh Kámyab, 27th June*, 1864.

121. No suit by the nominal lessor will lie to recover rent of which payment is proved to have been made to the real *benamee lessor*.—*Harak Pánré, 29th June*, 1864.

122 A tenant paying rent to the superior landlord, after the grant of an intermediate lease but without notice of it, is not liable to the intermediate lessee in respect of the same rent. —*Attápái Mullá, 21st August*, 1862.

123. A suit for arrears of house-rent, and for ejectment of the tenant from the house, is not a suit cognizable by the Revenue Authorities. House-rent includes the rent of the ground upon which the house stands, but as the items are not separable, the claim cannot be heard.—*Nawáb Háji Mahammad Khán Kuzalbásh, (S.) 28th June*, 1862.

124. But the mere existence of a house on land does not remove a suit for the rent of the land from the Collector's jurisdiction.—*Shekh Násar Ali, 5th July*, 1864.

125. A suit for arrears of rent due on account of an indigo factory is not cognizable under this clause.—*Adwaitya Chándra Pal, 1st April*, 1863.

126. Before arrears of rent can be recovered in a suit under this clause, the plaintiff must establish the fact that the defendant is his tenant.—*Muhammad Asan Choudhary, 31st March*, 1864.

127. The defendant having admitted himself to be a ryot of the plaintiff for a portion of the land referred to in the suit, *the burden* of proving a plea that he was not plaintiff's ryot for the rest of the land was clearly upon defendant.—*Guru Prasád Roy, 5th August*, 1862.

128. The mere denial by the defendant that he is a tenant of the plaintiff, does not take the case out of the jurisdiction of the Revenue Courts. Such a plea must be established by proof, to have that effect.—*Hari Prasád Máli, 19th August*, 1862.

129. A suit against a lessee for rent, and, in default, against his surety, may be heard under this clause.—*Kumar-un-nissá Bígam, (S.) 28th June*, 1862.

130. As the law only contemplates the occupancy, by a proprietor, of a defaulting tenant's tenure by a sazáwal, during the current year, the tenant is not liable for the short collections of a sazáwal beyond that period.—*J. Dalrymple, (S.) 24th April*, 1862.

131. In a suit against the heirs of a deceased farmer for rent accruing after his death, it was held that the obligation to pay rent depends upon proof of occupancy, either actual or constructive. A decree against the heirs up to a certain year, though strong *primâ facie* proof that they continued in possession the following year, is capable of being rebutted by clear evidence to the contrary.—*Khaja Abúl Hussain Khán, (S.) 23rd May*, 1862.

132. A person to whom a zemindar has assigned the right to recover rents, may proceed under this clause for the recovery of the same.—*Syámá Sundarí Dásí*, 4*th December*, 1862.

133. A suit for the right to erect golahs at certain ghâts on the land, and also to collect certain duties from persons who used these ghâts and golahs and for other purposes, was held not cognizable under this clause.—*Mr. James Forlong*, 17*th November*, 1862.

134. The terms of this clause are wide enough to extend the jurisdiction of the Collector in suits for rent, to cases of tenancies not strictly agricultural, provided the subject of the lease is land, and the rent issues from the land, and is due on account of and for the use of the land, whatever may be the purposes for which the surface of the land is used. When *the land* is leased for the erection of golahs, although the lease includes the right to levy golah duties, a suit will lie in the Collector's Court for rent under the lease.—*Robert Watson and Co.*, 6*th April*, 1864.

135. A suit for arrears of rent on account of a market is one within the jurisdiction of the Collector under this clause.—*Gayntrí Devyá*, 7*th June*, 1864.

136. The receipt of rent by the auction purchaser at the rate specified on the pottah, is no confirmation of an alleged mukararí tenure.—*Ra'dha' Kanth Dutt, &c.*, 21*st January*, 1864.—*Joténdra Mohan Thákúr*, 3*rd January*, 1864.

137. A lease was granted for a term of years at a certain reserved rent payable by instalments, with a stipulation in the kabúlyat that in case default were made in the payment of such instalments on the days they severally should become due the tenants should pay interest thereon at the rate of 1 per cent. per mensem. HELD that the landlord was entitled to interest after the rate agreed upon in respect of the instalments of rent during the several periods they had remained due, notwithstanding he had received such instalments from time to time after the day of payment.—*Rati Kanth Bose*, 30*th July*, 1862.

138. A landlord accepted the sums due on account of the principal rent on successive dates, from time to time, for a series of ten years, without making any demand for interest and without applying any of the sums paid during the above long period to the discharge of any interest which might be due. A Hindoo, by Hindoo law, can give up or waive a portion of his claim verbally. For these reasons, for the Judge found as fact that the plaintiff did waive his claim to interest, the High Court dismissed his appeal with costs and interest.—*Díndayál Parámánik*, 30*th March*, 1863.

139. Though, by the terms of the kabúlyat executed by the defendant in this case, he was bound to pay rent at a particular place, yet the conduct of the plaintiff in receiving rent in places other than that mentioned in the kabúlyat, raised a presumption that the original contract was subsequently varied.—*Rákhál Dás Mukharjyú*, 29*th April*, 1863.

140. In this case certain parties, the joint proprietors of a piece of land, covenanted that, at the end of the year, they would divide it, and that, if cultivation should have taken place before the partition was effected, rent should be paid according to a certain rate that was stipulated. HELD that a suit does not lie for such rent under this clause.—*Amrit Choudhary*, 20*th March*, 1863.

141. By a deed between A and B, B purchased from A a fractional share of a pergunnah, the Government revenue payable on which was Rs. 43-12: and it was stipulated that B was to apply to the Collector for mutation; and that until the mutation was completed, he should pay the above quota of the Government revenue through A, and that after the mutation, the relation between A and B should be an independent one. HELD that the relation of landlord and tenant was not created by the deed, and, consequently, that the 2[illegible]th Section of Act X. of 1859 did not apply to entitle A to interest upon the recovery of a quota of revenue payable by B under the deed.—*Golok Chandra Roy*, 16*th September*, 1862.

142. A suit by some of several lessors against the tenant and other lessors claiming a right to recover a particular share of the rent, the whole of which had been credited to the tenant on account by the other lessors, who were made defendants, is not a suit merely for arrears of rent due on account of land, within the meaning of this clause. It is partly a suit to try the right of several lessors as between themselves, and is therefore not cognizable under Act X. of 1859.—*Lálá Ishwarí Prasád*, 14*th March*, 1864.

143. The plaintiff's claim thrown out on the ground that he could not sue for the rent for his share of the rent without making his co-sharers parties.—*Syad Hydar Ali*, *(Review,)* 5*th April*, 1864.

144. Some of several shareholders, under a deed which does not define the share of each shareholder and the rent appertaining to him, may, if the plaint specifies the share held and the defendant do not deny it, bring a suit for their share of the rent, although the other shareholders do not join them or are not added as parties. The occupation and rent due being both clearly established, the defendants (special appellants) were not allowed to take the objection (not urged before or on the record) that the plaintiffs ought to shew that the defendant neglected or refused to come to a partition as a condition precedent to the plaintiff's right to enforce the rent sued for.—*Amrit Choudhary*, 6*th May*, 1864.

145. A suit for his share of the rent by a shareholder in an estate held in coparcenary will not stand if the tenant deny his share.—*Dhárm La'l Singh*, 8*th July*, 1864.

146. A suit for the realization of the balance of a decree obtained under Regulation VII. of 1799 partly satisfied by the sale of the tenure itself, will not lie under Act X. of 1859.—*Rájá Mahátáp Chandra*, 12*th March*, 1863.

147. A father cannot, as guardian of the property of his two infant daughters, sue for arrears of rent due to their estate without obtaining a certificate under Act XL. of 1858.—*Rákhál Dás Mukarjyá*, 9*th September*, 1863.

148. The admission of an agent that rent is due is not sufficient evidence to support a suit.—*Kálí Kishwar Roy*, 24*th September*, 1863.

149. If a tenant set up a pottah in disproof of the amount of rent claimed by his landlord, the *onus probandi* is upon him.—*Mussamát Chandra*, 23*rd June*, 1864.

150. A notice under Section 13 is not wholly vitiated though it have included land to which the plaintiff had no title.—*Chundra Kumár Roy*, 12*th July*, 1864.

151. A slight irregularity in the drawing up of a notice of enhancement need not invalidate it: the plaintiff is still entitled to a declaratory order reciting his right to enhancement after the issue of a proper notice.—*Rám Lochan Dutt*, 15*th July*, 1864.

152. The zemindár's payment having been credited by the Collector not as Government revenue, but as a deposit, and the zemindár having taken a receipt accordingly, the patnídár was justified in paying the revenue into the Collectorate to save the estate from sale, and such payment by him was sufficient payment of the patní rent to the zemindar.—*Jotendra Mohán Thákúr*, 11*th February*, 1864.

153. The proviso in the kabúlyat that the tenant shall pay at pergunnah rates for any land found on future measurement to be in excess of the recorded area, is to prevent the tenant from encroaching on the private lands of his zemindar, and does not vary the strict terms of the lease binding the tenant to pay a certain rent for an area found by a prior measurement.—*J. A. Courjon*, 16*th February*, 1864.

154. In a suit for rent in which the defendant sets up a claim to hold rent-free, the only issue is whether, as a fact, rent has been paid before the suit.—*Jodhí Singh*, 8*th March*, 1864.

155. During the pendency of a suit for rent, the plaintiff procured an attachment of the growing crops; and afterwards, without authority, and before the suit was determined, carried off some of the crops. HELD that, though this was an act properly punished by the Court below as a contempt, with a fine, it was no ground for dismissing the suit.—*Chattú Náth Singh*, 28*th July*, 1862.

156. Neither a person who, on attaining his majority, has ratified a pottah granted by his guardian's gomáshta, nor a purchaser in execution of a decree at the Sheriff's sale of his rights and interest, can question the competency of the gomáshta to give the pottah.—*Chandra Kanth Mukharjyá*, 31*st March*, 1864.

157. A zemindar not being bound to recognize the sub-division of a jote, the purchaser of part of the jote is jointly liable with the other holders for the rent of the whole jote.—*Sukhan Saháy*, 7*th June*, 1864.

158. A title to hold land at fixed rates which has been judicially established, cannot be disturbed upon the authority of a subsequent decree for arrears of rent which does not deal with the issue of title.—*Rái Rúp Roy*, 23*rd June*, 1864.

159. Lands were occupied by the Government for the purpose of making an embankment, without the observance of the formalities required by Regulation I. of 1825. HELD that the owner of the land was entitled to maintain a suit against Government for the rent of the land during the time he was kept out of possession.—*Joy Náráyan Bose*, 6*th August*, 1862.

160. Though, as a general rule, a mortgagor and mortgagee do not stand in the relation of landlord and tenant, yet when the mortgagee executes a lease in favor of the mortgagor stipulating to pay him a certain amount annually as rent, he is, as far as the payment of that sum is concerned, a tenant of the mortgagor, and must be sued for any arrears of such rent under Act X. of 1859.—*Bishwa Rúp Dutt*, 30*th June*, 1864.

5. All suits* to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment, or a lease may be liable to be cancelled;

161. If a tenant holds over after the expiration of his lease, the operation of the lease does not cease, and a condition, therein contained, of ejectment in case of an arrear accruing may be enforced.—*Hari Prasanna Roy*, *(S.)* 31*st December*, 1861.

162. The appeal, in a suit under this clause, lies to the Judge, under Section 160.—*Kálibar Upádhyáy*, 22*nd June*, 1864.

163. In a case of ejectment, if a third party pleads a permanent tenure conveyed to him by defendant, the *onus probandi* is upon him, and not upon the plaintiff.—*Lakshmí Na'ra'yan Paráma'nik*, *(S.)* 12*th June*, 1862.

* On an 8 anna Stamp. See Board's Rule IV. See also Rule VII.

164. A landlord cannot re-enter for default of the payment of rent for one year, if he have received the rent on account of a subsequent year.—*Shekh Pir Baksh*, 28*th July*, 1862.

165. A ryot is not liable to ejectment for a breach of any condition of his lease unless it has been stipulated that ejectment is to follow a breach of that condition.—*Guru Prasa'd Sirkár*, 19*th March*, 1863.

166. When the original pottah contains a condition of re-entry by the zemindar for non-payment of rent, Section 105 of this Act does not take away this right even if the tenure itself be saleable.—*Joy Durgá Devyá*, 13*th April*, 1863.

167. Although, in strict law, a farmer forfeits his lease by the withdrawal of the personal security given by him at the time of taking the farm, yet cases of forfeiture are not to be favored when no injury has resulted, or where a money compensation is a sufficient remedy. Mere unpunctuality in the date of payment of rent is no ground for forfeiture: if any injury has resulted from the farmer's unpunctuality, he may be sued for the interest due during the period in which the different instalments of rent remained unpaid, and for conditional forfeiture, but not for absolute forfeiture. As to what constitutes a sub-lease which, in contravention of a covenant not to under-let, causes a forfeiture against which no relief can be granted, it was held by one Judge that the lessee must transfer to the sub-tenant, all the rights which he himself has, not only of collecting the rents but of suing for them in the Courts; the other Judge being of opinion that, although the sub-lease may not be so absolute and complete as to make the lease void, yet it may be such a fraudulent evasion of the terms of the covenant as to entitle the plaintiff to equitable relief. The mere fixing of a sum which, under all circumstances, the sub-tenant must pay to the farmer, and the declaration of the sub-tenant's right to all sums collected beyond that amount, are not equivalent to a sub-lease.—*Alám Chándrá Sáhá*, 22*nd March*, 1864.

6. All suits* to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same;

168. In a suit for possession under this clause, the intervention of a third party claiming a right to the tenure, does not take the case out of the Collector's cognizance.—*Karuná Kanth Choudhary*, 15*th July*, 1863.

169. An intervenor cannot be heard in a suit preferred by a tenant under this clause, to recover possession of his tenure.—*Adya Prasád Chakravartti*, 11*th August*, 1863.

170. A suit to recover possession of land, if mesne profits be claimed simultaneously, may be brought in the Civil Courts, anything in this Section to the contrary notwithstanding.—*Rám-Lochan Dás*, 8*th January*, 1864.

171. Mesne profits cannot be recovered in a suit under this clause.—*Rátánmaní Dási*, 13*th February*, 1863.

172. The Court has not only to consider which party was in possession, without reference to the right to possession. The plaintiff must establish the fact that he has a *right* to be reinstated.—*Mádár Khán*, 27*th March*, 1863.

173. If the defendant does not dispute the tenancy of the plaintiff, the proper issue for trial is not whether he had a right of occupancy under Section 4, but whether the plaintiff was illegally ejected or not. If the ejectment was illegal, the plaintiff is entitled to recover possession, leaving the defendant to apply to the Collector to eject him under Section 25 if the plaintiff be a ryot without a right of occupancy.—*Mussamut Táj Bibí*, 23*rd June*, 1864.—*Chandra Sikhar Dé*, 8*th July*, 1864.

174. In a suit for illegal ejectment, although the plaintiff's pottahs may be bad, yet the Judge ought not to have decided the case against him without trying the question as to whether he had a right of occupancy, when such a question clearly arose from the pleadings.—*Baidya Nath Tewári*, 17*th February*, 1864.

175. A tenant who has a right to possession, may sue under this clause, although he may not have a right of occupancy under Section 6.—*Robert Watson & Co.*, 10*th April*, 1863.

176. In a suit under this clause, the plaintiff's title to obtain possession cannot be decided irrespective and independent of the fact of possession and of illegal ejectment.—*Pitambhar Mukarjyá*, 4*th August*, 1863.

177. The provisions of this clause, which restrict to the Collector's Court all suits to recover the occupancy of land from which a ryot has been dispossessed by the person entitled to receive rent for the same, must be considered to apply equally to cases in which the tenant words his suit as for confirmation of possession, and brings the suit against the persons entitled to receive rent in order to settle the question of right to possession.—*Guru Chárán Kumár*, 7*th June*, 1864.

178. The Collector has jurisdiction in a case where the zemindar opposes the entry of the purchaser of a transferable ryot's tenure.—*Dígámbári Dávyá*, 10*th June*, 1864.

* On an 8 anna stamp. See Board's Rule XVIII. See also Rule VII.

179. The suit must be by persons claiming to hold the land of the zemindars as their tenants or farmers.—*Robert Watson & Co.*, 13*th March*, 1863.

180. There is no jurisdiction under this clause in a case where the alleged dispossessors are not zemindars or superior holders of land.—*Karuná Máyí Dási*, 17*th February*, 1864.

181. In cases of ejectment, the tenant seeking to recover possession, is not bound to bring his suit under this clause, except where the ejectment has been the direct act of the zemindar entitled to receive the rent, or of his servant acting under his orders. Where third parties, with whom the tenant has no privity, eject him on the allegation of holding a lease from the zemindar, neither would such allegation, nor even the fact of their holding such a lease, nor any subsequent ratification of their acts by the zemindar, oblige the tenant to bring his suit in the Collector's Court.—*Jaykishn Mukarjyá*, 27*th June*, 1864.

182. An ousted tenant can sue the parties ousting him, and whom he knows to be not entitled to receive rent from him, as trespassers, in the Civil Court. The defendants' allegation that they hold a lease from the zemindar, and even a subsequent ratification of their acts by the zemindar, cannot oust the jurisdiction of the Civil Court, and oblige the plaintiff to bring his action under this clause.—*Mukbúl Hussain*, 27*th June*, 1864.

183. An ejectment was not illegal because it took place before the farmer ousting obtained a pottah from Government.—*Mr. Robert Morell*, 3*rd December*, 1863.

184. A suit cannot be brought under this clause by a person alleging himself to be the heir of an evicted ryot, if the zemindar denies his title as heir.—*Harícharan Lushkar*, 14*th April*, 1864.

185. This clause gives jurisdiction to the Collector in a suit to recover the occupancy or possession of a farm from which the farmer has been illegally ejected by the person entitled to receive rent for the same. Disturbing or dispossessing the cultivators is, in effect, ejecting and disturbing in the receipt of rent the farmer to whom they pay their rent.—*Sangat Mahto*, 23*rd April*, 1864.

186. A ryot ousted by order of a Magistrate under Section 318, Act XXV. of 1861, is not bound in a consequent suit against his landlord under this clause to refer to the Magistrate's proceedings.—*Srímatí Lakshmí Devyá*, 25*th April*, 1864.

7. All suits* arising out of the exercise of the power of distraint conferred on zemindars and others by Sections cxii. and cxiv. of this Act, or out of any acts done under color of the exercise of the said power, as hereinafter particularly provided ;

187. A party sued against a distraint alleging that his rent was Rs. 24, not Rs. 112 ; the burden of proof was on him ; as he failed to prove his allegation, it was not necessary to consider the proofs adduced by the defendant.—*Shekh Khudá Baksh, (S.)* 12*th June*, 1862.

188. An action will lie under this Clause, by an under-tenant upon whom a distress is made for the rent of his lessor, the crop distrained having been sold by the distrainor without giving the notice required by the Act. It is sufficient to show that the act complained of was done by the defendants in exercising the powers of distraint conferred by this Act.—*Nandazá*, 29*th January*, 1863.

189. A suit lies against a gomáshta personally who distrains without a written power of attorney (*vide* Section cxliii). But, if he acts under orders from his master, or if the master receives the proceeds, the master too may be sued.—*Kálí Mohan Roy Choudhary*, 13*th February*, 1863.

shall be cognizable by the Collectors of land revenue, and shall be instituted and tried under the provisions of this Act, and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court, or by any other officer, or in any other manner.

190. A plaintiff is bound to prove his case as laid in the plaint ; a plaintiff having relied upon a document which has been rejected by the Court, cannot be permitted subsequently to set up a fresh case.—*Nara Hari Mahant*, 12*th August*, 1862.—*Guru Dás*, 31*st March*, 1864.

191. The plaintiff sued for rent claimed to be due under a kabúlyat. It appeared that no such kabúlyat had ever been executed and that the document relied upon by the plaintiff was a forgery ; but it also appeared that the defendant held land of the plaintiff under mukararí leases. HELD that the plaintiff could not, in this suit, recover rent in respect of the occupation under the mukararí jummas.—*Sannú Kárígar*, 8*th August*, 1862.

192. The plaintiff sued the defendant for rent, basing his claim upon a kabúlyat ; his suit was dismissed, and the kabúlyat pronounced to be spurious. HELD that he was not estopped from afterwards suing the same defendant to set aside a pottah under which the defendant claimed, the validity of the pottah not being in issue in the former suit.—*Umá Náth Roy Choudhary*, 28*th June*, 1864.

193. A suit concerning land situated in the *revenue* jurisdiction of one district, and the *civil* jurisdiction of another, is properly instituted before the Collector of the revenue district,

* On an 8 anna Stamp see Board's Rule IV. See also Board's Rule VII.

but the appeal will lie to the Judge within whose civil jurisdiction the land is situated.—*Latíf-un-Nissá Bibí*, 22nd *August*, 1862.

194. The jurisdiction of a Collector under Act X. of 1859, is not affected by the nature of the defence set up. Section xcvii., Act VIII. of 1859, is not applicable to suits brought under the provisions of Act X. of 1859. Under this last Act, which was passed after Act VIII., a certain class of suits, as detailed in this Section, are made cognizable by the Collector and by the Collector alone; any suit therefore which falls within the provisions of this Section is not cognizable by the Civil Court. Act X. lays down a course of procedure to be followed in the trial of suits under that Act. This procedure varies from that laid down in Act VIII., and there is no enactment that, in all other respects, the procedure shall be governed by Act VIII. of 1859. If the Legislature intended that the procedure under Act VIII. was to be applicable, in its entirety, to suits under Act X., it would have been obviously unnecessary to enact such clauses as Section lxvii. and Section clxi. in the latter Act. The whole of the procedure of Act VIII. would have been imported without any reservation into Act X.—*Dayál Chandra Ghose*, 16*th September*, 1862.

195. Section 7, Act VIII. of 1859, is applicable to suits under this Act; every suit therefore must include the whole of the claim arising out of the cause of action, and if any portion be not included in the suit, it cannot be afterwards sued for.—*Ráni Bhava Sundari*, 24*th June*, 1864.

196. Act X. of 1859 does not apply to a suit by a patní talúkdár against a ghátwál for lands held in excess of his tenure. In such a case the question is the title to the lands, and that is not a question for the decision of the Revenue Courts.—*Gangá Náráyan Sen*, 16*th December*, 1863.

197. A plaintiff cannot lump up in one suit several distinct claims.—*Murád Ali*, 21*st February*, 1863.

198. The Court should dismiss a suit brought against several defendants with no common tie as multifarious and defective even though the plea be not raised.—*Ganesh Prasád*, 24*th June*, 1864.

199. A statement under Act VIII. of 1859, is not in the nature of confession and avoidance as in English pleadings, where the confession is considered as an admission of the party, and the avoidance has to be proved. The statement of a party, if it is to be used as evidence against him, must be taken altogether and not in part.

A general custom is not proved by the statements of two individuals, or by proving that two particular tenants paid at a particular rate.—*Lálá Prabhu Dás*, 14*th March*, 1864.

200. The death of one of the parties to a suit does not abate the suit, unless the case is in any way prejudiced thereby.—*Jagamohan Singh*, 13*th April*, 1864.

201. The Court of first instance having declared a pottah on which the plaintiff relied to be forged, the Appellate Court could not decree the case without disposing of the issues thus raised.—*Kamal Kishn*, 25*th April*, 1864.

202. This was a suit by a *landholder* to recover possession of land from which he had been ousted by his tenant who, after having executed kabúlyats and paid him rents for a series of years, ceased to pay and so evicted him. The plaintiff might have sued the defendant to recover rent on the kabúlyat when the defendant abstained from payment of rent and first set up an adverse title to the plaintiff: but as he now looks upon the defendant as a trespasser, his suit to recover possession is rightly brought in the Civil Court, instead of before the Collector under this law.—*Shiva Prasád Chakravartty*, 9*th June*, 1864.

203. The finding of a Court cannot be questioned in a Court of concurrent jurisdiction.—*Nava Kumár Bhattáchárrgyá*, 22*nd June*, 1864.

204. That the plaintiff has ceased to be a landholder since the cause of action does not remove the case from the Collector's jurisdiction.—*Muhummad Kádir*, 1*st July*, 1864.

Suits by zemindars against their agents for money or accounts.

XXIV. Suits* by zemindars, and others in receipt of the rent of land, against any agents employed by them in the management of land or collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession, shall be cognizable by the Collectors, and shall be instituted and tried under the provisions of this Act, and shall not be cognizable in any other Court except in the way of appeal as provided in this Act.

205. Does not apply to amlah and other servants who are not agents employed in the management or collection of rents.—*Lálá Ratan*, 17*th February*, 1863.

206. A suit by one of a body of patnídárs against his co-patnídárs for his share of the rents collected by them, is not a suit against an agent employed in the management of land or collection of rents according to this Section, but is cognizable in the Civil and not the Revenue Court.—*Kuní Rám Púrka*, 21*st September*, 1863.—*Subhal Singh, &c.*, 17*th February*, 1864.

* For proper Stamp, see Board's Rule IV. See also Rule VII.

207. HELD, with reference to the terms of the bond, that the liability of the heirs of the deceased surety of an agent, was not determined by the death of the surety, but that they continued liable to the extent of the property which they inherited.—*Srímatí Ráni Mohíní*, 30*th April*, 1864.

208. A suit lies under this Section against a son-in-law who acts as Sar-ba-ráh-kár, has the entire management of his mother-in-law's property, and gives receipts for rents collected by his tahsíldár.—*Sukh Lál Tewáry*, 16*th July* 1864.

Ejectment of cultivators, farmers, &c., by zemindars.

XXV. If any zemindar, or other person in receipt of the rent of land, require assistance to eject any cultivator, not having a right of occupancy; or to eject any farmer or other tenant holding only for a limited period, after the determination of his lease or tenancy; or any agent, after the determination of his agency; or to enforce any attachment or ejectment expressly authorized by any Regulation or Act;—he shall make application* to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated thíká zar-i-peshgí or the like, in which an advance has been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the repayment of such advance, either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court.

Proviso.

209. If a tenant holds over after the expiration of his lease, the operation of the lease does not cease, and a condition, therein contained, of ejectment in case of an arrear accruing, may be enforced.—*Hari Prasanna Roy, (S)* 31*st December*, 1861.

210. In a case of ejectment, if a third party pleads a permanent tenure conveyed to him by defendant, the *onus probandi* is upon him, and not upon the plaintiff.—*Lakhsmí Náráyán Parámánik, (S.)* 12*th June*, 1862.

211. A zemindar, installed by the Collector under this Section, must be held to be in actual possession and enjoyment of the estate.—*Mahesh Chandra Pál Choudhary* (*S.*) 14*th June*, 1862.

212. A Collector has no jurisdiction, in a suit for ejectment under this Section, to interpret the terms of a deed of compromise made between the parties before him in a civil suit.—*Dasharati Patnáik*, (*S.*) 28*th June*, 1862.

213. A suit to contest the orders of a Collector under this Section, may be brought under Section xxiii., cl. 6, or in the Civil Court as the case may be.—*C. J. Philip*, 3*rd June*, 1863.

214. An appeal from an order of the Collector passed under this Section, lies to the Commissioner, and not to the Judge.—*Rám Kumár Mukarjyá (S.)* 22*nd August*, 1861.—*Mír Muhammad Takí Choudhary* (*S.*) 17*th June*, 1861.—*C. J. Philip*, 3*rd June*, 1863.

215. A zemindar can oust a tenant in execution of a decree for arrears of rent under Act X of 1859. He can also, under Section 105, bring to sale a transferable under-tenure; in which case all prior liens on the estate are valueless, so long as the rent decreed to be in arrears remain unpaid But if, instead of selling the under-tenure, he puts up to sale and purchases his defaulting ryot's "rights and interests" in the land, which have already been sold under a decree of the Civil Court, and bought by a party for valuable consideration, he cannot be allowed to oust that party.—*Mahárájá Satísh Chandra Roy*, 27*th June*, 1864.

216. This Section does not preclude a zemindar, or other person in receipt of the rent of land, from asserting his rights in the Civil Courts instead of applying to the Collector for assistance.—*Madan Mohan Roy*, 21*st August*, 1863.

217. A zemindar is not always obliged to apply to the Collector, under this Section, for assistance to eject a cultivator, whether he requires such assistance or not. A tenant ejected by the zemindar without application made to the Collector, is not, on that account, illegally ejected, unless it is proved that the landholder took any illegal measures to eject the tenant. The mere fact of the tenant no longer possessing what he once possessed, is insufficient to show that he has been illegally ejected.—*Sheo Ratan Singh*, 11*th May*, 1864.

218. An auction purchaser cannot eject a ryot with a right of occupancy except by legal process as prescribed in this Act.—*Dévi Bhakat*, 12*th July*, 1864.

XXVI. *Repealed. Sections ix., x., and xi., Act VI. of* 1862, *(Bengal Council,) substituted.*

---

* On an 8 anna stamp: see Board's Rule IV.

XXVII. All dependent tálúkdars and other persons possessing a permanent transferable interest in land intermediate between the zemindar and the cultivator, are required to register in the sarrishta of the zemindar or superior tenant to whom the rents of their tálúks or tenures are payable, all transfers of such tálúks, or tenures, or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every zemindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and to all such successions and divisions. If any zemindar or superior tenant refuse to admit to registry, or otherwise give effect to, any such transfer or succession, the transferree or successor may make application* to the Collector, and the Collector shall thereupon proceed to enquire into the case in the manner provided for suits under this Act; and, if no sufficient grounds are shown for the refusal, shall pass an order enjoining the zemindar or superior tenant to admit to registry and otherwise give effect to such transfer or succession. Provided that no zemindar or superior tenant shall be required to admit to registry, or give effect to, any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the zemindar or superior tenant.

Registry of transfers of tálúks, &c.

Proviso.

219. The appeal lies to the Commissioner.—*Mír Muhammad Takí Choudhary*, (*S.*) 17*th June*, 1861.

220. This Section does not apply to a person who does not possess an intermediate transferable right between the zemindar and the cultivator, but stands in the place of the cultivator himself, whose rights and interests in the land he has bought. He is therefore not compelled to notify his purchase in the proprietor's register.—*Mahárájá Satísh Chandra Roy*, 27*th June*, 1864.

221. The proprietor of a tenure whose name is registered in the zemindar's office, is not exempt from the payment of rent although he has not possession of the tenure, unless he can show that he was ousted by the zemindar.—*Mussamat Mohan Málá*, (*S.*) 27*th March*, 1862.

222. If a zemindar has recognized a transfer by receiving rent from the transferor for a lengthened period, he cannot, although the transfer may not have been registered in his office, hold the original owner responsible, and ignore the rights of the transferee.—*Nava Kumár Ghose*, 15*th July*, 1864.

XXVIII. So much of Section x., Regulation XIX. 1793, Section x., Regulation XLI. 1795, Section vi., Regulation XXXI. 1803, Section xxi., Regulation VIII. 1805, and Section xxiv., Regulation XII. 1805, as authorizes and requires proprietors and farmers of estates and dependent tálúks, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said Section, of their own authority to collect the rents of such land; and to dispossess the grantees of the proprietary right in the land; and to re-annex it to the estate or tálúk in which it may be situate, is repealed; and any proprietor or farmer who may desire to assess any such land, or to dispossess any such grantee, shall make application*† to the Collector, and such application shall be dealt with as a suit under the provisions of this Act. Every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued. If such period has already elapsed, or will elapse within two years from the date of the passing of this Act, such suit may be brought at any time within two years from such date.

Applications to dispossess grantees of land exempt from revenue.

223. An application to the Collector under this Section is a suit, and the appeal lies to the Judge, not to the Commissioner.—*Bishwambhar Misser*, 18*th March*, 1863.

224. A suit to resume can only be brought under Section 30, Regulation II. of 1819, in the case of lands alleged to be held under a grant of a prior date to 1st December, 1790. When the title to hold as lákhiráj is alleged to have arisen subsequently to that date, proceedings by a proprietor wishing to have the lands assessed or to dispossess the grantee, *must* be taken under this Section, and the burden of proof will lie on the person instituting the proceedings.—*Kishn Chandra Biswás*, 2*nd May*, 1864.

* On an 8 anna Stamp: see Board's Rule IV.
† See also Board's Rule VII.

225. A person wishing to put another on proof of his title, not knowing whether it originated before or after 1790, is not bound to sue under this Section, but may sue under Regulation II. 1819.—*Kírtti Náráyan Choudhary*, 14*th August*, 1864,—*Prabhu Dás Banarjyá*, 2*nd June*, 1864.

226. A suit may be brought in the Civil Courts to resume lands, after the Collector has dismissed the claim upon the ground that the lands had not been shown to have paid revenue since 1790.—*Prabhu Dás*, 22*nd June*, 1864.—*Jay Kishn Mukharjyá*, 15*th July*, 1864.

227. In a suit brought under this Section if it be proved that the tenure was created before 1st December, 1790, the Revenue Courts have no authority to try its validity or otherwise, or any question bearing upon that issue.—*Rám Nidhí Baidya*, 18*th March*, 1864.

228. The point to be looked to in adjudicating whether limitation can be successfully pleaded by a lákhirájdár against a zemindar, who does not sue to assess for 12 years, is not the validity of the title deeds, but proof of the existence of the tenure as rent-free before 1st December, 1790.—*Kenárám Mállik*, 23*rd August*, 1863.

229. If a landholder claims lands as part of his rent-paying estate, *i. e.*, asserts that the tenure has been created since 1790, and that the lands are rent-paying lands, he is bound to prove his allegation and show that the ryot has paid rent for the land in question some time since the decennial settlement. But if the landholder claims the land on the general ground that it is held on an invalid title, the ryot who alleges a lákhiráj title before the decennial settlement, is bound to prove his special plea.

The landholder in this case having once before sued the ryot under this Section, and been cast on the ground that he could not prove payment of rent, cannot now bring a suit for the same thing in the Civil Court.—*Dwáriká Náth Sámant*, 30*th June*, 1864.

230. Suits for the assessment or resumption of lands alleged to be held on invalid lákhiráj titles created since 1790, must be brought under this Section; the ground of such actions necessarily being that the land in question at one time formed part of the plaintiff's estate. But suits for the resumption of other rent-free tenures, on the ground of invalidity of title, must be brought under Section 30, Regulation II. of 1819, the presumption in such cases being that the tenure was in existence previous to 1790, though its validity is open to attack. If a plaintiff first sues under this Section, and fails to prove that the land formed part of his permanently settled estate, he is not debarred from bringing an action under Section 30, Regulation II. of 1819, in the Civil Court to try the validity of the lákhirájdár's title. But, by so doing, he admits the existence of the tenure as rent-free from the time of the decennial settlement, of which proof need not be required from the defendant, and the defendant's plea of limitation (if advanced) will be fatal to the claim, unless the plaintiff can show that he is an auction purchaser and has brought his claim within 12 years of his purchase.—*Rám Charan Dutt*, 30*th June*, 1864. *Jay Kishen Mukharjyá*, 15*th July*, 1864.

231. In order to entitle a landowner to recover, in a suit for the possession of lands in the actual possession of the defendant who claims a lákhiráj tenure, on the ground that such land is not lákhiráj but belongs to a rent-paying village, it is incumbent on the plaintiff to show that rent has been paid in respect of the land since the decennial settlement.—*Táriní Prasád Ghose*, 15*th December*, 1862.

232. A suit under this Section cannot be maintained upon the ground that the tenant holds under an invalid tenure, but upon the ground that he holds under a tenure invalid *for the reason mentioned in Section* 10, *Regulation XIX. of* 1793, *viz.*, that the grant under which he holds was made since 1st December, 1790.—*Maháráni Indrajít Kunwar*, 19*th February*, 1863.

233. A zemindar is not entitled to resume lands in excess of 100 bighás held under one deed. In order to start a suit for possession or assessment under this Section, plaintiff ought to make out a *primâ facie* case of the commencement of the rent-free holding after 1790.—*Harihar Mukharjyá*, 21*st December*, 1863.

234. A patnídár is entitled to exercise all the rights of ownership with respect to the land which the zemindar himself might, but for the patní, have exercised.—*Gyá Rám Mandal*, 29*th July*, 1862.

*Suits by or against sar-ba-ráh-kárs or tahsíldárs of estates held khás.

XXIX. All suits which, under the provisions of this Act, may be brought by or against zemindars or other persons in the receipt of the rent of land, may be brought by or against sar-ba-ráh-kárs or tahsíldárs of estates held under khás management whether such estates are the property of Government, or of individuals. If the Collector or the sar-ba-ráh-kár or tahsíldár of any such estate in the provinces of Bengal, Behar, and Orissa, proceed against any defaulting ryot or under-tenant of such estate under the powers vested in him by Section xxv., Regulation VII. 1799,* and not according to the provisions of this Act, such ryot or under-tenant may contest the demand on account of which he is so proceeded against, by suit in the Civil Court.

* See Board's Rule XII., and Appendix A.

XXX. Except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action.*

Time for commencement of suits generally.

235. Limitation cannot be pleaded for the first time orally in appeal.—*Collector of Rájshahye, 26th January*, 1864.

236. This provision of Section 14, Act XIV. of 1859, in favour of a person who has bonâ fide prosecuted his suit in a wrong Court does not apply to suits under this Act which are expressly exempted from the operation of Act XIV. of 1859, by Section 3 of that Act.—*Soddmini Dasi, 19th July* 1864.

XXXI. Suits for the delivery of pottahs or kabúlyats, and for the determination of the rates of rent at which such pottahs or kabúlyats are to be delivered, may be instituted at any time during the tenancy.

Time for commencement of suits for grant of pottahs, &c.

XXXII. Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year, or from the last day of the month of Jeyt of the Faslí or Wiláyatí year in which the arrear claimed shall have become due. For arrears of rent due at the passing of this Act, suits shall be brought within three years after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire. Provided that, if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under Section xiii., and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengal year, or of the month of Jeyt of the Faslí or Wiláyatí year, on account of which such enhanced rent is claimed.

Time for the commencement of suits for arrears of rent.

Proviso.

237. The mere fact that no rent has been paid for 21 years, is no bar to the hearing of a suit when use and occupation are admitted.—*Mussamát Jhajá Kunwar, (S.) 26th June*, 1862.

238. Neither under this Section nor under Act XIV. of 1859 can more than three years' back rent be recovered.—*J. G. Bagram, 1st July*, 1864.

239. Any claim beyond this will be disallowed even in the High Court, though the plea have not been raised by the defendant.—*Muhammad Dád Khán, 11th July*, 1864.

240. The period of limitation within which suits must be brought for rent due *at the time of the passing* of this Act, must be reckoned from 29th April, 1859, the date of the passing of the Act, and not from 1st August, 1859, the date on which the Act came into operation.—*Bábú Lakshmípat Singh, 25th August*, 1863.

XXXIII. Suits for the recovery of money in the hands of an agent, or for the delivery of accounts or papers by an agent, may be brought at any time during the agency, or within one year after the determination of the agency of such agent, or, in the case of claims now existing, within one year after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire. Provided that, if the person having the right to sue shall, by means of fraud, have been kept from the knowledge of the receipt of any such money by the agent,—or if any fraudulent account shall have been rendered by the agent,—the suit may be brought within one year from the time when the fraud shall have been first known to such person; but no such suit shall, in any case,—(except the case of claims now existing as aforesaid),—be brought at any time exceeding three years from the termination of the agency.

Time for the commencement of suits against agents for money, papers, or accounts.

Proviso.

241. If a principal *suspends* an agent, the agency must be held to have been determined within the meaning of this Section from the time of the suspension.—*Madan Mohan Roy, 27th January*, 1864.

* See also Act LIII. of 1860, the provisions of which are, however, obsolete.

242. A suit to recover, against *the surety* of a deceased agent, monies which that agent had embezzled, is not provided for by this Section.—*Bilás Maní, 8th April*, 1863.

Mode of instituting Suits. Form of plaint or statement of claim.

XXXIV. Suits under this Act shall be instituted by presenting to the Collector* a plaint or statement of claim which shall contain the name, description, and place of abode of the plaintiff; the name, description, and place of abode of the defendant, so far as they can be ascertained; the substance of the claim; and the date of the cause of action.

Statement by whom to be presented.

XXXV. The statement of claim shall be presented by the plaintiff, or by an authorized agent of the plaintiff who has personal knowledge of the facts of the case, or by an agent who shall be accompanied by a person who has such knowledge.

243. As under Section 69, the gomáshta may be plaintiff, the presentation by him is presentation by the plaintiff, and consequently he requires no power of attorney.—*Mí'yáján Khán, Gomáshta, 26th March*, 1863.

244. A gomáshta can present the written statement of claim under this Section.—*Ramá Náth Roy Choudhary, 4th August*, 1863.

245. A suit cannot be dismissed *at the hearing*, on the ground of the plaintiff's representative not having a sufficient personal knowledge of the facts of the case. The course provided by Section LXIV. should be followed in such circumstances.—*Bábú Sekráj Roy, 19th April*, 1864.

Verification of statement.

XXXVI. The statement of claim shall be subscribed and verified at the foot, by the plaintiff or his agent, in the manner following, or to the like effect:—

I, A. B., do declare that the above statement is true to the best of my knowledge and belief.

Punishment for false verification.

If the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.†

246. The principal is not liable to be indicted for perjury for a false statement by his agent.—*Tárá Prasád Roy Choudhary, 12th August*, 1862.

XXXVII. *(Repealed.—See Act X. of* 1862.*)*

Documentary evidence to be produced by plaintiff.

XXXVIII. If the plaintiff rely, in support of his claim, on any document in his possession, he shall deliver the same to the Collector at the time of presenting his statement of claim. Unless such document be delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

247. The proper course for a party bringing a suit under Act X. is, to file, *with his plaint*, the original document on which his claim is based, unless he has some excuse. The neglect to do so, however, does not necessitate the dismissal of the suit, if the case can proceed without the production of such document.—*Mussamát Umárath Devyá, 16th January*, 1861.

248. A plaintiff having relied upon a document which has been rejected by the Court, cannot be permitted subsequently to set up a fresh case.—*Nara Hari Mahant, 12th August*, 1862.

249. The discretion of the Lower Court in receiving documents not filed by the plaintiff with his statement of claim cannot be questioned in appeal.—*Sukh Lál Tewáry, 16th July*, 1864.

250. The Judge was wrong in refusing to look at the evidence filed by the plaintiff *and admitted by the Court of first instance* because it was not filed with the plaint.—*Jay Chandra Sármá, 2nd March*, 1864.

If the plaintiff require production of document from defendant.

XXXIX. If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his statement of claim, deliver to the Collector a description of the document in order that the defendant may be required to produce the same.

---

* See Board's Rule II.
† Penal Code, Cap. XI.

XL. *Repealed. Section xii., Act VI. of* 1862, *(B. C.,) substituted.*

Form of plaint in suits for ejectment of ryot, &c., or for recovery of occupancy or possession of land, &c.

XLI. If the suit be for the ejectment of a ryot, farmer, or tenant, from any land, farm, or tenure, or for the recovery of the occupancy or possession of any land, farm, or tenure, the statement shall describe, (as circumstances may require), the extent, situation, and designation of the same; and, if necessary for the identification of the land, shall set forth the boundaries of such land.

Statement may be returned or allowed to be amended.

XLII. If the statement of claim do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Collector may return the statement to the plaintiff, or, at his discretion, allow it to be amended.

Issue of summons; personal attendance of defendant may be required.

XLIII. If the statement of claim be in proper form, the Collector, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant, and if the plaintiff require the personal attendance* of the defendant, and satisfy the Collector that such personal attendance is necessary, or the Collector, of his own accord, require such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons, otherwise the summons shall order the defendant to appear, personally, or by an agent duly authorized on his behalf who has personal knowledge of the subject, or who shall be accompanied by a person who has such personal knowledge.

The day to be specified in the summons how to be fixed. Defendant to be ordered to produce necessary documents, and to bring witnesses willing to attend without process.

XLIV. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be, or be supposed to be, at the time, from the place where the Court is held, and the summons shall order the defendant to produce any document which he may have in his possession, of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence. It shall also enjoin him to bring with him his witnesses, if they are willing to attend without issue of process; and shall be in the form (A) contained in the Schedule to this Act, or to the like effect.

Summons how to be served.

XLV. The summons shall be served by delivering a copy of the summons to the defendant personally when practicable; or, if the summons cannot be served on the defendant personally, by affixing a copy of it to some conspicuous part of his usual place of abode, and also affixing a copy of the same in the Collector's Office.

Endorsement by Názir if summons has been personally served or not.

XLVI. If the summons be served personally, the Názir shall endorse on the summons the fact of such service. If personal service be not effected, the Názir shall endorse on the summons the reason of not serving it personally, and how it has been served.

Execution of process in another District.

XLVII. If the usual place of abode of the defendant be in another District,† the summons, together with the cost of the service thereof, shall be sent by the public post to the Collector of such District, who shall issue the summons, and return the same after service, with the prescribed endorsement, to the Officer by whom it was transmitted to him.

Cost of serving summons or warrant to be deposited in Court.

XLVIII. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next succeeding Section, of serving the warrant, shall, in all cases, be deposited in Court upon the same day, or the day next following, that on which the plaint or statement of claim is presented to the Collector.

* See Board's Rule XI. † If in Calcutta, see Board's Rule X.

If the said amount be not so deposited,—(except in cases in which the Collector may allow the issue of summons free of cost under the discretion reserved to him in Section cxlvi.),—the case shall not be brought on the file of suits. But, in such case, the plaintiff may present another plaint at any time within the period allowed by the rules for the limitation of actions.

Warrant of arrest in what cases to be issued.

XLIX. If, in any suit against an under-tenant or ryot for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers, or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant,—such defendant being resident within the district in which the suit is instituted,—he shall present, with his statement of claim, an application* for the issue of such warrant. When such application is presented, the Collector shall examine the plaintiff or his agent on his oath or affirmation or otherwise according to the law for the time being in force in relation to the examination of witnesses,† and inspect the documents adduced by him in support of his claim; and, if there be *primâ facie* grounds for believing the claim to be well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Collector may issue a warrant for the arrest of the defendant. The Collector shall fix a reasonable time for the return of the warrant (which shall be in the form (B) contained in the Schedule to this Act or to the like effect,) and the Officer entrusted with the service of the warrant shall, at the time of arresting the defendant, deliver to him a notice addressed to the defendant, (which shall be in the form (C) in the Schedule or to the like effect), containing the particulars of the claim, and requiring the defendant, if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence. But no such warrant shall be issued in a suit for arrears of rent due in respect of a dependent tálúk or other transferable tenure, which, as hereinafter provided, is liable to sale in execution of any decree which may be passed in the case.‡

Procedure after arrest of defendant.

L. If a defendant be arrested under the warrant of arrest, he shall be brought, with all convenient speed, before the Collector, and the Collector shall commit him to custody unless he deposit in Court such sum as may be specified in the notice.

Procedure when defendant is brought before the Collector under warrant.

LI. When a defendant is brought before the Collector under warrant, the Collector shall, with all convenient speed, proceed to try the case in the manner hereinafter provided; and, if the suit cannot be at once adjudicated, the Collector may, if he think fit, require the defendant to give security for his appearance, whenever the same may be required, at any time whilst the suit is depending, or until execution of the final decree which may be passed thereon, and may commit the defendant to the Civil jail, to be there detained until he shall furnish such security or deposit such sum as the Collector shall order. The security bond§ shall be in the form (D) contained in the Schedule to this Act or to the like effect.

Form of security bond.

Procedure if warrant of arrest cannot be served upon the defendant.

LII. If the defendant cannot be arrested under the warrant, the Collector, on the application* of the plaintiff, shall either postpone the case, for such period as he may think proper, in order that the plaintiff may apply, within the said period, for another warrant to be issued for the arrest of the defendant, or shall, forthwith, issue a proclamation‖—to be affixed in his own office and at the residence of the defendant,—fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice at the residence of the defendant. If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding Section.

---

* For proper Stamp, see Board's Rule IV.
† Act VIII. of 1859, § 149-179: (Appendix B): and Board's Rule V.
‡ Section CV.
§ Board's Rule III.
‖ See Form H., appended to the Board's Rules.

Compensation for arrest applied for without reasonable cause.

LIII. If it shall appear to the Collector that the arrest of the defendant was applied for without reasonable cause, the Collector may, in his decree, award to the defendant such sum, not exceeding one hundred Rupees, as he may deem a reasonable compensation for any injury or loss which the defendant may have sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

Consequence of neither party appearing on the day of trial.

LIV. If, on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case shall be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules for the limitation of actions.

If defendant only appear to dispute the demand, Collector shall pass judgment by default; but if defendant admit the claim, Collector shall decree upon such admission.

Proviso.

LV. If, on any such day, the defendant only appear, the Collector shall pass judgment against the plaintiff by default, unless the defendant admit the cause of action, in which case the Collector shall proceed to give judgment for the plaintiff, upon such admission, without costs; provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

If plaintiff only appear, Collector may proceed ex-parte.

LVI. If, on any such day, the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and, after considering the allegations of the plaintiff, and any documentary or oral evidence adduced by him, may either dismiss* the case, or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment ex-parte against the defendant.

If defendant appear on a day to which the case is postponed, Collector may allow him to be heard in answer to the suit.

LVII. If the defendant shall appear on any subsequent day to which the hearing of the suit may be postponed under the last preceding Section, the Collector may, upon such conditions, if any, as to costs or otherwise as he may think proper, allow the defendant to be heard, in answer to the suit, as if he had appeared on the day fixed for his attendance.

Revival, reversal, and alteration of decrees *ex-parte* or by default.

LVIII. No appeal shall lie from a judgment passed ex-parte against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But, in all such cases, if the party, against whom judgment has been given, shall appear, either in person or by agent, (if a plaintiff within fifteen days from the date of the Collector's order, and if a defendant within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period,) and shall show good and sufficient cause for his previous non-appearance, and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and alter or rescind the decree, according to the justice of the case. But no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

251. The order of a Deputy Collector admitting a revival under this Section, is final under Section XIII, Act VI. 1862, B. C. The Collector cannot hear an appeal from such an order.—*Kishta Nath Biswás, 22nd February*, 1864.

* 252. The Collector did not act without jurisdiction in reviving, under this Section, (upon an application made to him within 15 days from the sale in execution of the decree) a suit which was decreed ex-parte by the Principal Sudder Ameen with powers of a Deputy Collector. When an estate is sold in execution under Section CV. or Section CX, the sale of the tenure is the execution of the process for enforcing the judgment, within fifteen days of which the defendant in an ex-parte case, may, under this Section, apply for a re-hearing.—*Jotendra Mohan Thákúr, 3rd May*, 1864.

* See Board's Rule I.

On appearance of parties, the parties to be examined by the Collector, and may cross-examine each other.

LIX. When both parties appear, in person or by agent, on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned for sufficient reason to be recorded by the Collector, the Collector shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other. If either of the parties be not bound to attend personally, any agent by whom he shall appear, or any person who shall accompany such agent, shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally. At the time of examination, the defendant, if he think fit, may file a written statement* of his defence.

253. A petition to correct the deposition of an agent should be received with the greatest caution, if at all.—*Rám Náráyan Singh, 24th June,* 1864.

Examination of parties, &c.

LX. The examination of the parties or their agents or such other persons as aforesaid, shall be upon oath or affirmation or otherwise according to the law for the time being in force relative to the examination of witnesses.† The substance of the examination shall be reduced to writing in the vernacular language of the Collector‡ and filed with the record.

Witnesses to be examined.

LXI. If either of the parties shall bring forward a witness on such day, the Collector may take the evidence of such witness.

Documentary evidence to be produced by defendant.

LXII. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit; and, unless such document be so delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

After examination, Collector may make his decree if no further evidence is required.

LXIII. If, after the examination required by Section lix., and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Collector shall make his decree accordingly.

Consequence of inability of agent to answer.

LXIV. If, on such examination as aforesaid, the agent of either party be unable to answer any material question relating to the case which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to answer as aforesaid shall attend in person on such day; and if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default,§ or make such other order as he may deem proper in the circumstances of the case.

254. A case cannot be *dismissed*, at this stage, for want of personal knowledge in the agent.—*Sekráj Roy, 19th April,* 1864.

If necessary, Collector to record issue and to fix a day for hearing further evidence.

LXV. If, on such examination as aforesaid, it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.

* For proper Stamp, see Board's Rule IV.
† Act VIII. of 1859 § 149-179. (Appendix B.): and Board's Rule V.
‡ Board's Rule V., Cl. 5.
§ See Board's Rule I.

Parties shall produce their witnesses on the day of trial; or Collector, on application of either party, shall issue summons for the attendance of a witness.

LXVI. The parties shall bring forward their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply* to the Collector in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Collector shall issue a summons† requiring such witness to attend.

255. Sometime after the date fixed for hearing, plaintiff applied to the first Court for a subpœna against certain witnesses, and a formal order was passed, directing service of subpœna. It is not for him to object that the Court decided the case against him without summoning all his witnesses. It was his duty to secure the attendance of his witnesses in due time before the day of hearing.—*Tilok Chand Sáhá*, 17*th February*, 1864.

Rules regarding attendance, examination, &c., of witnesses.

LXVII. The provisions of the Regulations and Acts and all other rules for the time being in force relating to the evidence of witnesses;‡ for procuring the attendance of witnesses and the production of documents; and for the examination, remuneration, and punishment of witnesses, whether parties to the case or not; in cases before the Civil Courts of the Presidency of Bengal, shall, except in so far as the same may be inconsistent with the provisions of this Act, apply to, and be of equal force and effect in, suits under this Act.

256. When a plaintiff cited as a witness, refuses to attend, the law does not peremptorily enjoin upon the Court to dismiss the case for default, but also vests it with the power of passing such other order as may seem meet to it from the evidence on the record.—*Azíz-un-Nissá, Bibí*, 15*th April*, 1863.

257. The proceedings of the Collector were held to be irregular because he discharged the defendant's witnesses without taking their deposition, after having kept them in attendance nearly a month, and because he afterwards verbally ordered the defendants to procure their witnesses within 3 days, and, on their failure to appear, decided the case in their absence.—*Shekh Kámyáb*, 27*th June*, 1864.

258. The Court being satisfied that the non-appearance of the defendant's witnesses, who were plaintiff's servants, was of purpose, properly dismissed the suit.—*J. G. Bagram*, 1*st July*, 1864.

Consequence of parties not appearing on the day fixed for the trial of any issue.

LXVIII. If, on the day fixed for the trial of any issue, neither of the parties appear, the case shall be struck off under the conditions provided in Section liv. If, on any such day, one only of the parties appear, the issue may be tried and determined, in the absence of the other party,‡ upon such proof as may be then before the Court

Suits instituted or defended by náibs, gomáshtahs, &c.

LXIX. When suits under this Act are instituted or defended by náibs, gomáshtas, or other persons employed in the collection of rent or management of land, in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such náibs, gomáshtas, or other persons; and anything which, by this Act, is required or permitted to be done by a party in person, may be done by any such person as aforesaid. Processes served on any such person shall be as effectual, for all purposes in relation to the suit, as if the same had been served on the landholder in person, and all the provisions of this Act, relative to the service of processes on a party to the suit, shall be applicable to the service of processes on such person.

259. Under this Section the gomáshta may be plaintiff; the presentation by him is presentation by the plaintiff, and consequently he requires no power of attorney.—*Miyáján Khán*, 26*th March*, 1863.

Personal attendance of plaintiff or defendant not required in certain cases.

LXX.§ A plaintiff or defendant shall not be required to attend in person, if of the female sex, and of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

* On plain paper: see Schedule B, Act X. of 1862: Article 10 General Exemptions.
† See Form 1. appended to the Board's Rules.
‡ See Act VIII. of 1859, Sections cxlix to clxxix, and also Board's Rule V.
§ See Board's Rule I.

LXXI. Any party to a suit may employ an authorized agent or mukhtyár to conduct the case on his behalf, but the appointment of such agent or mukhtyár shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or any order of the Court.—*(Remainder repealed. Section xiv., Act VI. of* 1862 *B. C. substituted.)*

Employment of authorized agents or mukhtyárs.

LXXII. The Collector may, in any case, grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also, from time to time, in order to the production of further proof or for other sufficient reason to be recorded* by the Collector, adjourn the hearing or further hearing of any case in such manner as to him may seem fit.

Collector may grant time or adjourn hearing.

260. In a case involving title, and where an absentee landlord was defendant, it was held that the Collector ought to have allowed him time beyond the ordinary period to file his defence.—*Mahárájá Narendra Náráyan Bhúp, (S.)* 31*st July*, 1861.

261. It is optional with the Collector to give time to a party under this Section or not.—*Jotánchandra Roy, (S.)* 26*th June*, 1862.

LXXIII. The Collector may, at any stage of a case, cause a local enquiry† and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person. The provisions of the law for the time being in force, relative to local enquiries by Ameens or Commissioners under orders of the Civil Courts,‡ shall apply to any local enquiry made by any officer under this Section, and, so far as they are applicable, to enquiries made by the Collector in person. In the latter case, the Collector, after completing the enquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.

Collector may cause local enquiry to be made.

LXXIV. (Repealed. Sections vii. and viii., Act VI. of 1862, *B. C. substituted.)*

LXXV. No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court, from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

No interest on deposits.

LXXVI. If, on the trial of a suit for the delivery of a pottah instituted by a ryot having a right of occupancy, the parties do not agree as to the term for which the pottah is to be granted, the Collector shall fix such term as, under the circumstances of the case, he may think just and proper. Provided that the term shall not, in any case, be longer than ten years, and, in estates not permanently settled, shall not extend beyond the period for which the proprietor of the estate has engaged with Government. Provided also that, if the defendant be a farmer or other person having only a temporary interest in the land, the term of the pottah shall not extend beyond the period of the continuance of such interest. For cultivators not having a right of occupancy, the term of pottah shall be exclusively in the discretion of the person entitled to the rent of the land.

If on trial of suit for delivery of pottah, parties do not agree as to the time for which the pottah is granted, Collector to fix the time.

Proviso.

262. In a suit by a landowner to recover rent at enhanced rates, or for a kabúlyat at enhanced rates, the rent cannot be fixed for a period of years as it can be, under this Section, in a suit by a ryot with rights of occupancy, for a pottah. The difference between the two cases is this, that a right of occupancy is the right of the *ryot*. It does not also give the landlord a right to compel him to continue his occupation.—*James Hills, Appellant, H. C., 2nd September*, 1863.

LXXVII. When, in any suit between a landholder and a ryot or under-tenant under this Act, *the right to receive the rent* of the land or tenure cultivated or held by the ryot or under-tenant, is disputed, and such right is claimed§ by or on behalf of a third person, on the ground that such third person, or a person

If in actions for rent a third person appear as claimant, he is to be made a party to the suit.

* Board's Rule V., cl. 11 to 13.
† Board's Rules XXIV. and XXV.
‡ See Act VIII. of 1859, Section clxxx.
§ For proper Stamp, see Board's Rule IV.

through whom he claims, has, actually and in good faith, received and enjoyed such rent before, and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be enquired into, and the suit shall be decided according to the result of such enquiry. Provided always, that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court, if instituted within one year from the date of the decision.

Proviso.

263. A ryot on being sued for rent, pleaded that he had sold a part of his lands and paid a portion of the rent to the farmer of the estate. Neither the farmer nor the vendee were made defendants, nor did they appear of their own accord before the Collector. The suit being decreed, the farmer and the vendee appealed to the Judge with the ryot, but were not heard. HELD that the Judge should have remanded the case to the Collector to be tried *de novo* under this Section.—*Tárá Chand Potdár, (S) 5th September,* 1861.

264. In a suit for the rent of certain lands, the Civil Court set aside a kabúlyat given to A by B, and ordered B to pay rent to C. In this civil case, A was not a party. Subsequently, A sued B for the rent of the same land upon the strength of the same kabúlyat. HELD, with reference to the provisions of this Section, that A was prevented by the Civil Court's decree from obtaining the rent from B until he had established a superior title to C.—*Anánd Mohan Ghose* (S.) *27th March,* 1862.

265. If an intervenor shows conclusively, by a final decree of the Civil Court, that the right to receive rents has been decided in his favor and against the plaintiff, the Collector cannot give plaintiff a decree, notwithstanding that he may have been collecting the rents. But if the effect of the decree of the Civil Courts be a matter of proof, the Collector should enquire, as directed by this Section, into the fact of previous enjoyment of the rents.—*Syad Ahmad Razá, 5th August,* 1863.

266. A zemindar installed by the Collector under Section xxv., must be held, for the purposes of this Section, to be in actual possession and enjoyment of the estate.—*Mahesh Chandra Pál Choudhary (S.) 14th June,* 1862.

267. If a party against whom a decree of the Civil Court has been given, be not ousted from possession in execution of such decree, he is entitled to collect rents, subject to account to the decree-holder for the same.—*Panchánan Banarjyá, (S.) 27th March,* 1862.

268. A suit on a kabúlyat which the Court did not trust, was rightly dismissed without trying the case as between plaintiff and an intervenor under this Section.—*Azíz Ahmad Gházi,* (S.) *24th April,* 1862.

269. In a suit for rent claimed to be due to the plaintiff by inheritance from his wife, S. B., the defendant pleaded that one M. H. was heir to S. B., and that, since her death, he had paid the rent to him. M. H. intervened, and pleaded that he had succeeded S. B., and was entitled to the rent. HELD that, as between the plaintiff and the third party, the Judge was bound, under this Section, to enquire into "the question of the actual receipt and enjoyment of the rent by such third person," and to decide the suit "according to the result of such enquiry;" and that he could not therefore simply dismiss the suit, on the mere ground that the plaintiff had failed in establishing his claim.—*Mírzá Záhid Ali, 5th August,* 1862.—*Ránt Khyameshwarí Dévyá, 8th July,* 1864.

270. A purchaser of a transferable tenure may defend a suit brought against his vendor for arrears said to be due before the date of purchase, even although he should not have registered the transfer, as the tenure is imperiled should such arrears be proved.—*Shiva Náráyan Bhatácháryya,* (S.) *5th September,* 1861.

271. In a suit for arrears of rent not exceeding 100 Rupees in amount, to which a third person who claims a right to receive the rents, is made a party under this Section, no question of right or title is necessarily involved such as to justify an appeal to the Judge from the decision of a Collector.—*Bhagavatí Dévyá,* (S.) *1st October,* 1861.—*Prán Náth Roy Choudhary,* (S.) *5th December,* 1861.

272. The decision of a Collector on the claim of a third party intervening under this Section, is not final, but appealable to the Judge, although the rent in dispute be below Rs. 100.—*Kála Chand Chakravarttí* (S.) *26th June,* 1862.—*Gopál Chandra Dás, 10th September,* 1863.

273. This Section applies only to cases where two parties claim rent from the *same* ryot, and not to a case where the intervenor claims rent for the same land, but from a ryot other than the ryot sued by the plaintiff.—*Prán Náth Roy Choudhary, (S.) 5th December,* 1861.

274. A Collector is not competent, under this Section, to pass a judgment which determines a question of right to rent upon the ground of legal title to the land. The only point he can decide is whether the third party in the suit has hitherto received the rents in good faith, and in doing so, no question of *title* to the land can be adjudicated upon.—*Messrs. Watson & Co.,* (S.) *6th March,* 1862.

275. In a case involving a question of right and title, the plaintiff is entitled to have his evidence heard and considered by the Court of first instance before he is referred to the Civil Court.—*Shekh Mubárak Hussain (S.) 12th June,* 1862.

276. In a suit for arrears of rent, the defendant urged that the lands were not in plaintiff's village, but in another village, the property of a third party, who also appeared and supported defendant in the above answer. An ameen was appointed to visit the land, and he reported that there was no such village as that alleged by defendant and third party, and that the land really was in plaintiff's village. Plaintiff got a decree accordingly. This decision was considered defective, because, as the third party averred that he received the rents from defendant, that was the point to be determined in the case under this Section.—*Chatourí Misser* (*S.*) *8th May*, 1862.

277. A person alleging himself to be a perpetual lessee of some land, sued a ryot for rent. The ryot's defence was that plaintiff was not the real lessee, and that he was not his ryot. The zemindar supported this defence, saying that he had not given a lease to the plaintiff, but to another person, and as this person was dead, the lease had reverted to him, the zemindar. The lower Court found that the lease held by plaintiff was a valid document, and decreed the claim. Case remanded that evidence might be taken under this Section as to which of the claimants had received the rents of the land.—*Syámá Charan Háldár*, (*S.*) *13th May*, 1862

278. Whenever a third party in a suit for arrears of rent, claims to have been in possession and to have collected the rents from the tenants during the time for which rent is claimed, such third party must be made a party to the suit as directed in this Section. The case must not be decided as only between plaintiff and defendant.—*Kundra Pradhán (S.)* *11th June*, 1862.

279. The suit being for arrears of rent for an 8 anna share of an estate, and the third party who intervened under this Section, having claimed only 6 annas of the rent, the Judge, in finding in favor of the third party, should not have dismissed the whole claim, but should have passed some order regarding the remaining 2 anna share.—*Sheo Prasád Choudhary*, *2nd September*, 1863.

280. The receipt of rent as an *agent* does not give a title, under this Section, to the continued receipt of such rent after the agency is determined.—*Gopál Chandrá Roy*, *1st June*, 1864.

281. If it be found that an intervenor under this Section is entitled to the rent, the suit should be dismissed though the intervenor admits that he is liable to the plaintiff for the rent.—*Kálí Charan Dé*, *27th January*, 1863.

Suits for ejectment or cancelment of lease.

LXXVIII. Any person desiring to eject a ryot or to cancel a lease on account of non-payment of arrears of rent, may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of suits for the ejectment of a ryot or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed.

282. Sections xxi., xxii., and lxxviii. of Act X. must be read together, and those parties only can be ejected under Section lxxviii., who come within the purview of Sections xxi. and xxii. Persons *with a permanent* or *transferable interest*, do not come under those Sections, and consequently this Section does not apply to them. A decree-holder must realize his dues from such persons by the mode enjoined in Section cv. of the Act, *viz.*, by the sale of the tenure, and, if that does not suffice, by the sale of any other property, moveable or immoveable, belonging to the debtor.—*Nand Lál Ghose*, (*S.*) *31st December*, 1860.—*Rám Kishn Dás*, (*S.*) *26th March*, 1862.

283. If the pottah contain a condition of ejectment, it may be enforced even though the tenure be saleable.—*Jay Durgá Devyá*, *13th April*, 1863.

284. The zemindars having, by their acts, admitted the tenure to be transferable and mukararí, it is not for the Court to declare that the tenure is neither transferable nor mukararí in a suit for rent. The proper tribunal to settle these questions is the Civil Court, and not the Revenue Courts under this law.—*Bábú Dhanpat Singh*, *5th May*, 1861.

285. In a suit for arrears of rent and for ejectment under this Section, the appeal lies to the Judge, not to the Collector, although the amount of the arrear be less than 100 Rupees.—*Káláchand Chakravarttí*, (*S.*) *26th June*, 1862.

286. A suit for arrears of house-rent and for ejectment of the tenant from the house, is not a suit cognizable by the Revenue Authorities under this Section, which makes no mention of the rent of houses.—*Nawáb Hájí Muhammad Khán Kuzalbásh (S.)* *28th June*, 1862.

287. A suit was brought under this Section, for arrears of rent due up to the end of 1267 and for ejectment of the tenant; but as the plaintiff had received rent from the tenant for the year 1268, it was held that the receipt of rent for 1268 barred the landlord's right to eject the tenant for the non-payment of rent due up to the end of 1267. In other words, a landlord cannot re-enter for default of the payment of rent for one year, if he have received the rent on account of a subsequent year. The receipt of the rent for 1268 had the same effect as if the landlord had, at the commencement of 1268, created a new tenancy.—*Shékh Pír Baksh*, *28th July*, 1862.

288. If a lease provides that, in case of default of payment of rent, the lessor shall have the power of re-enty, without expressly mentioning the mode of effecting it, the lessor is bound to exercise this power according to the provisions of Section xxii. But parties may contract that there shall be a power of re-entry without applying to any Court.—*R. Solano, 23rd December*, 1862.

289. This Section does not give a landlord the right to eject a tenant for non-payment of arrears of rent due in the middle of a year.—*Mr. R. Savi, Junior, 13th March*, 1863.

290. In a suit for ejectment, a third party intervened, alleging that not the defendant but he was the real occupant. HELD that there was no necessity for adjudicating the claim of the third party, inasmuch as under Section lxxxii, a third party could not be evicted by a decree passed against the defendant.—*Shekh Salím, 20th March*, 1863.

291. A zemindar cannot eject a ryot under a decree passed under this Section, if a third party pays in the amount decreed, on the allegation that he is the transferee of the right and title of the original tenant.—*Sároda Prasád Roy Choudhary, 13th April*, 1863.

292. In a suit for rent, and also for ejectment of the ryot under this Section supported by a previous unsatisfied decree, the Lower Court passed a decree for the rent without specifying ejectment, and the plaintiff neither applied to that Court to amend its decree, nor appealed against it. The ryot, by paying the amount of arrear specified in the decree, saved himself from ejectment.—*Mr. R. Savi, 18th March*, 1864.

LXXIX. *Repealed. Section i., Act VI.*, 1862, *(B. C.) substituted.*

If a person required by the decree refuse to grant pottah, Collector may do so.

LXXX. When decree is given for the delivery of a pottah, if the person required by the decree to grant such pottah, refuse or delay to grant the same, the Collector may grant a pottah in conformity with the terms of the decree, under his own hand and seal, and such pottah shall be of the same force and effect as if granted by the person aforesaid.

Refusal of person to execute kabúlyat as required by the decree.

LXXXI. When a decree is given for the delivery of a kabúlyat, if the person required by the decree to execute such kabúlyat shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person, and a copy of the decree under the hand and seal of the Collector shall be of the same force and effect as a kabúlyat executed by the said person.

Mode of executing decree for ejectment or reinstatement of ryot.

Punishment for obstructing execution.

LXXXII. If the decree be for the ejectment of any ryot from land occupied by him, or for the reinstatement of any ryot in the occupancy of land from which he has been ejected, the decree shall be executed by giving the possession or occupancy of the land, to the person entitled by the decree to such possession or occupancy. If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the order is made, the Magistrate, on the application of the Collector, shall give effect to the same.

Mode of executing decree for cancelment of a lease or for ejectment or reinstatement of a farmer or tenant.

LXXXIII. If the decree be for the cancelment of any lease, or the ejectment of any farmer or other person, (not being an actual cultivator), or for the reinstatement of any farmer or other such person, in the possession of a farm or tenure from which he has been ejected, the decree shall be executed by proclaiming the substance of the decree to the cultivators or other occupants by beat of drum, or in such other manner as may be customary, and affixing the same in some conspicuous place within or adjacent to the farm or tenure.

In what case a judgment-debtor may be detained or imprisoned without issue of process of execution.

LXXXIV. If the decree be for arrears of rent or for money, papers, or accounts, and the defendant have been committed to jail or appear pursuant to the conditions of any security bond given under Section li., the Collector may order that he be detained in or committed to the civil jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree.

Liability of surety on failure to deliver judgment-debtor into custody.

LXXXV. If the judgment-debtor have given security for his appearance and be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, process of execution may be taken out against the surety in

the same manner as if a decree for the amount due by the debtor had been passed against the surety. If the decreebe for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety for the sum due under the bond, in the same manner as if a decree for that sum had been passed against the surety.

LXXXVI. *Repealed. Section xvii., Act VI., 1862, (B. C) substituted.*

Application for execution against moveable property.

LXXXVII. Any moveable property required to be seized under an execution shall, if practicable, be described in a list* to be furnished by the judgment-creditor; but if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects to the amount of the judgment and costs. In either case, the property to be seized shall be pointed out to the officer entrusted with the execution of the process by the creditor or his agent.

How long warrant shall continue in force.

LXXXVIII. Every warrant of execution shall bear date on the day on which it is signed by the Collector, and shall continue in force for such period as the Collector may direct, not being more than sixty days calculated from such date.

Second and successive warrants.

LXXXIX. Second and successive warrants of execution may be issued by order of the Collector, on the application* of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

After one year execution not to issue without notice.

XC. Process of execution shall not be issued upon any judgment, without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year shall have elapsed from the date of the judgment, or from the date of the last previous application for execution.

Execution not to issue against heir or representative of a deceased party without notice.

XCI. Execution on a judgment shall not issue against the heir, or other representative of a deceased party, without notice to such heir, or other representative, to appear and be heard.

No process of execution to be issued three years after date of judgment.

XCII. No process of execution of any description whatsoever shall be issued, on a judgment under this Act, after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred Rupees, in which case the period, within which execution may be had, shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Civil Courts.†

293. No suit can be maintained in a Civil Court to enforce a decree of a Revenue Court, which the Revenue Court has refused to execute upon the ground that it has been satisfied.—*Anand Máyí Dásí, 3rd June*, 1863.

Warrant against the person.

XCIII. If a warrant issue for taking in execution the body of any person, the Officer charged with the execution of the warrant, shall bring him, with all convenient speed, before the Collector. If such person shall not then deposit in Court the full amount specified in the warrant; or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor; or satisfy the Collector that he has no present means of paying the debt; the Collector shall send him to the civil jail, there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall, in the meantime, pay the full amount for the payment of which he is liable under the decree. Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not

Limit of imprisonment.

* On 8 anna Stamp. See Board's Rule IV.
† See Act XIV. of 1859, Section xx.

f

exceed three calendar months when the amount decreed, exclusive of costs, does not exceed fifty Rupees, or six calendar months when such amount does not exceed five hundred Rupees, or two years in any other case. If the decree against any person arrested under a warrant, be for the delivery of papers or accounts, and the papers or accounts shall not be delivered by him when he is brought before the Collector,* such person may be committed to the civil jail, there to remain for such time, not exceeding six calendar months, as the Collector shall direct, unless he shall, in the meantime, deliver the papers or accounts according to the terms of the decree.

If arrest be for non-delivery of accounts.

XCIV. Any person once discharged from jail shall not be imprisoned a second time under the same judgment. If the amount due under the decree do not exceed one hundred Rupees, the Collector may declare such discharged person absolved from further liability under that decree. In other cases, the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to such person from attachment in execution of the same.

No person to be imprisoned a second time under same judgment.

XCV. Any person applying for a warrant of arrest under Section xlix., or suing out process of execution against the body of any person, shall deposit in Court, at the time of issue of the warrant, diet-money for one month of thirty days at such rate as the Collector may direct, not exceeding two annas per diem, unless the Collector, for any special reason, direct that deposit be made at a higher rate, which shall not exceed four annas per diem.

Diet-money to be deposited at the time of issue of warrant.

XCVI. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment; in failure of which, the party confined shall be discharged.

Payment of diet-money in advance during imprisonment.

XCVII. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit, and any diet-money not so spent shall be returned to the person who deposited the same.

Diet-money to be costs in suit.

XCVIII. In executing a writ of execution against the moveable property of a debtor liable under this Act, the Officer* charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor. A copy of the said proclamation and list shall be transmitted to the Collector and shall be affixed in his Office.

List of property to be prepared and proclamtion of sale to be published, &c.

XCIX. No sale of any moveable property taken in execution shall be made until after the end of ten days next following the day on which such property may have been so taken. Until such sale, the property shall be deposited in some fit place; or it may remain in custody of some fit person approved by the Officer executing the writ. The provisions of Sections cxxix. to cxxxiii., so far as the same are applicable, shall be applied to sales under this Section.

Custody and sale of moveable property taken in execution.

C. If, before the day fixed for the sale, a third party appear before the Collector and claim† a right or interest in any of the moveable property taken in execution, the Collector shall examine such party or his agent on oath or affirmation or otherwise, according to the law for the time being in force relative to the examination of witnesses‡ and, if he see sufficient reason for so doing, may stay the sale of such property.

Collector may stay sale of moveable property seized, if a third party claim any interest therein.

* Board's Rule XXI.
† On 8 annas Stamp: see Board's Rule IV.
‡ See Act VIII of 1859, Secs cxlix. to clxxix. (Appendix B); and Board's Rule X.

CI. The Collector shall adjudicate upon such claim, and make such order between the claimant and the plaintiff and defendant in the original suit, as shall seem fit. In trying such claim, the Collector shall be guided by the rules contained in this Act so far as they may be applicable.

Collector to adjudicate such claims.

CII. If the claimant shall fail to establish his right to the property taken in execution, the Collector, at the time of disposing of the case, may award to the judgment-creditor, against such claimant, as part of the costs, such sum as he may consider sufficient to cover any loss of interest, or damage, which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

Claimant failing to establish his right liable to pay compensation to judgment-creditor

CIII No appeal shall lie from any order passed by the Collector under the two last preceding Sections. But the party against whom the same may be given, shall be at liberty to bring a suit in the Civil Court to establish his right, at any time within one year from the date of the order; provided that, if the order be for the sale of the property, the suit shall not be for the recovery of the property, but shall be for damages against the judgment-creditor by whom the property was brought to sale.

No appeal from order of Collector under the two last preceding Sections.

Proviso.

CIV. No irregularity in publishing or conducting a sale of moveable property under an execution, shall vitiate such sale; but this rule shall not be held to deprive any person, who may sustain damage by reason of such irregularity, from recovering such damage by action in the Civil Court; provided such action be brought within one year from the date of sale.

Sale not vitiated by irregularity in publishing or conducting the same.

Proviso.

CV. If the decree be for an arrear of rent due in respect of an under-tenure which, by the title deeds, or the custom of the country, is transferable by sale, the judgment-creditor may make application * for the sale of the tenure, and the tenure may, thereupon, be brought to sale in execution of the decree, according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force.† But no such application shall be received, when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor, so long as such warrant remains in force. If, after sale of an under-tenure, any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the debtor, and any such immoveable property may be brought to sale in the manner provided in Section cx. of this Act.

Sale of transferable tenures in execution of decrees for arrears of rent.

294. Plaintiffs sued as purchasers of an under-tenure sold in satisfaction of a decree for arrears of rent under this Section. Defendant, in reply, questioned plaintiffs' title, alleging that the tenure was purchased by private sale before the sale in execution, and that he (defendant) held under the representative of the private purchaser. HELD that this objection could not be entertained.—*Messrs. Cohn, Feilman and Co., (S.) 14th June*, 1862.

295 The zemindar's right to sell, under this Section, takes precedence of all prior liens upon the tenure: but he must sell the tenure, not "the rights and interests" of the tenant.—*Mahárájá Satish Chandra Roy, 27th June*, 1861.

CVI. If, before the day fixed for the sale of any such under-tenure as aforesaid, in execution of a decree for arrears of rent due in respect of such under-tenure, a third party appear before the Collector, and allege* that such third party, and not the person against whom the decree has been obtained, is the proprietor of such under-tenure, and was in lawful possession of the same at the time when such decree was obtained, the Collector shall examine such party, in the manner provided in

If third party claim to be the lawful possessor of such under-tenure, Collector to stay the sale and to enquire into and adjudicate upon the claim.

* On an 8 anna Stamp: see Board's Rule IV.
† Act VIII, of 1835. See Appendix (C) and Board's Rule XIII.

Section c. for the examination of third parties, and, if he see sufficient reason for so doing, and such party shall deposit in Court the amount of the decree, or give sufficient security for the same, the Collector shall stay the sale and proceed to enquire into and adjudicate upon the claim. Provided that no transfer of an under-tenure which, by the provisions of this Act, or any other law for the time being in force, is required to be registered in the sarrishta of the zemindar or superior tenant, shall be recognized, unless it have been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Collector.

Proviso.

296. Mere cognizance by the zemindar of the fact of a party having purchased a tenure, is not sufficient to cure the defect of non-registration of such tenure in the zemindar's office. A zemindar is not bound to recognize any transfer in regard to which application has not been made, to have such transfer registered in the zemindaree office, unless it can be proved that the zemindar has not only known of the transfer, but has also accepted the transferree as his tenant; the receipt of rent by the zemindar after such transfer being one of the best proofs of the fact of the zemindar having so accepted the transferree.

297. If a zemindar has recognized a transfer by receiving rent from the transferee for a lengthened period, he cannot, although the transfer may not have been registered in his office, hold the original owner responsible, and ignore the rights of the transferee.—*Nava Kumár Ghose*, 15*th July*, 1864.

Mode of adjudicating such claims.

CVII. In trying such claim, the Collector shall be guided by the rules contained in this Act, so far as the same may be applicable; and the judgment passed by the Collector, on such claim, shall not be subject to appeal, but the party against whom it is given, may bring a suit in the Civil Court to establish his right at any time within one year from the date of the judgment.

Execution of decrees given in favor of sharers in undivided estates or tenures.

CVIII. If a decree is given in favor of a *sharer* in a joint undivided estate, dependent tálúk, or other similar tenure, for money due to him on account of his share of the rent of an under-tenure situated in such undivided estate, or tálúk, or tenure, application for the sale of such under-tenure shall not be received unless execution shall have been first taken out against any moveable property which the judgment-debtor may possess within the District in which the suit was instituted, and the sale of such property, if any, shall have proved insufficient to satisfy the judgment. In such case, such under-tenure, if of the nature described in Section cv., may be brought to sale in execution of the decree, in the same manner as any other immoveable property may be sold in execution of a decree for money, under the provisions of the two next following Sections.

In all cases of decrees for money, if judgment cannot be satisfied by sale of debtor's moveable property, execution may be had against his immoveable property.

CIX. In the execution of any decree for the payment of money under this Act, not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the District in which the suit was instituted, the judgment-creditor may apply* for execution against any immoveable property belonging to such debtor.

Mode of executing process if immoveable property be a house or other building.

If it be a saleable under-tenure.*

CX. If the immoveable property against which execution is applied for, be a *house* or other *building*, process shall be issued in the same manner as for the attachment and sale of moveable property, and the provisions of Sections xcviii. and xcix.† shall be applicable to the execution of such process. If the property be a *saleable under-tenure*, it shall be sold under the provisions of the law, for the time being in force, applicable to the

* On an 8 anna Stamp: see Board's Rule IV.
† See Board's Rules XX and XXI.

If it be an estate or a share of an estate.

sale of such under-tenures for demands other than those of arrears of rent due in respect thereof.* If the property be *an estate or a share of an estate*, it shall be sold under the rules in force for the sale of estates for the recovery of demands recoverable by the same process as arrears of land revenue.†

298. A Collector has power to give possession to a purchaser in a sale held under this Section.—*R. Solano, 19th April*, 1864.

Consequence of objection being offered before the sale of an immoveable property.

CXI. If, before the day fixed for the sale of any immoveable property as aforesaid, objection‡ shall be offered to the sale, on the ground of such property not belonging to the judgment-debtor, and, consequently, not being liable to be sold in execution of a decree against him, the Collector shall examine the party making the objection, in the manner prescribed in Section c. for the examination of third parties, and, if satisfied that there is sufficient ground for so doing, shall stay the sale and proceed to enquire into and adjudicate upon the objection, in the same manner, and subject to the same right of suit by the party against whom judgment may be given, as is provided in Section cvii.

Produce of the land to be held hypothecated for the rent.

Arrears of rent may be recovered by distraint under the following rules.

Cultivators who have given security to be exempt from distraint.

Proviso.

Proviso.

CXII. The produce of the land is held to be hypothecated for the rent payable in respect thereof; and when an arrear of rent, as defined in Section xx. of this Act, is due from any cultivator of land, the zemindar, lákhirájdár, farmer, dependent tálúkdár, under-farmer, or other person *entitled to receive rent immediately* from such cultivator, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by DISTRAINT and sale of the produce of the land on account of which the arrear is due, under the following rules. Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given, shall not be liable to distraint. Provided also that no *sharer* in a joint estate, dependent tálúk, or other tenure, in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorized to collect the rents of the whole estate, tálúk, or tenure, on behalf of all the sharers in the same. Provided further that, in Patídári estates situated in districts under the Government of the Lieutenant-Governor of the North-Western Provinces, distraint shall be made only through a Lumberdar.

299. A distraint can only be levied for an arrear due from the actual cultivator of the crops who is in possession of the land.—*Mohiní Dási, 1st June*, 1864.

No distraint in certain cases.

CXIII. Distraint shall not be made for any arrear which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.

Power of distraint to be exercised by managers under the Court of Wards, &c.

CXIV. The power of distraint vested by Section cxii. in zemindars and other persons entitled to recovery rent from cultivators of land may be exercised by managers under the Court of Wards, Sarbarahkárs, and Tálúsildárs of estates held under khás management, and other persons lawfully entrusted with the

* Act VIII of 1859, § CCXLVIII., &c. (Appendix B): and Board's Rule XIV.
† Act XI. of 1859, § V.
‡ On an 8 anna Stamp: see Board's Rule IV.

charge of landed property; and also by the Náibs, Gomáshtahs, and other agents employed by any such persons as aforesaid in the collections of rent expressly authorized by power of attorney in that behalf. Provided that, if any illegal act is committed by any such Náib, Gomáshtah, or other agent under color of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

Proviso.

CXV. Standing crops, and other ungathered products of the earth, and crops or other products, when reaped or gathered, and deposited in any threshing floor, or place for treading out grain, or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act. But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce, *after it has been stored* by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

Standing crops and crops gathered but not stored liable to distraint.

CXVI. Before, or at the time when, distraint is made under this Act, the distrainor shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter, or, if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

Defaulter to be served with a written demand, &c., before, or at the time of, distraint.

CXVII. Unless the amount of the demand is immediately paid or tendered, the distrainor may distrain property as aforesaid, of value proportionate to the amount of the arrear with costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

Distress to be proportionate to the arrear if not paid or tendered.

List of property distrained, to be served on owner.

CXVIII. Standing crops, and other ungathered products, may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries, or other places, as are commonly used by him for the purpose. If the cultivator neglect to do so, the distrainor shall cause the said crops or products to be reaped or gathered, and, in such case, shall store the same either in such granaries, or other places, as aforesaid, or in some other convenient place in the neighbourhood. In either case, the distrained property shall be placed in the charge of some person appointed by the distrainor for the purpose. Crops or products which, from their nature, do not admit of being stored, may be sold before they are cut or gathered, under the rules hereinafter provided; but, in such case, the distraint shall be made at least twenty days before the time when the crops or products, or any part of the same, would be fit for cutting or gathering.

Standing crops, &c., when attached to be reaped and stored by the cultivator, or, if he neglect to do so, by the distrainor.

CXIX. If a distrainor shall be opposed, or shall apprehend resistance, and shall desire to obtain the assistance of a public Officer, he may apply* to the Collector, and the Collector may, if he thinks necessary, depute an Officer to support the distrainor in making the distraint.

Distrainor may apply for aid to the Collector upon occasion of resistance made or apprehended.

CXX. When any person, empowered to distrain property under Section cxii, or Section cxiv, shall employ a servant or other person, to make the distress, he shall give to such servant or person, a written authority, (which may be on plain paper), for the same, and the distress shall be made in the name, and on the responsibility, of the person giving such authority.

Persons empowered to distrain may give written authority to their servants to do so.

* On an 8 anna Stamp; see Board's Rule IV., and see also Rules XVII. to XIX.

CXXI. If, at any time after property has been distrained, and prior to the day fixed for its being put up to sale as hereinafter provided, the owner of the property shall tender payment of the arrear demanded of him, and of the expenses of the distress, the distrainor shall receive the same, and shall forthwith withdraw the distress.

Distress to be withdrawn if defaulter tender payment of arrear and expenses of attachment prior to the day of sale.

CXXII. Within five days from the time of the storing of any distrained crops or products, or, if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress, the distrainor shall apply for sale of the same, to the Civil Court Ameen or other Officer authorized to sell property in satisfaction of decrees of the Civil Court within the circle in which the distrained property is situate, or to such other public Officer as the local Government shall appoint for the purpose.

Application for sale.

CXXIII. The application shall be in writing, and shall contain an inventory or description of the property distrained, the name of the defaulter and his place of residence, the amount due, and the date of the distress, and the place in which the distrained property is deposited. Together with the application, the distrainor shall deliver to the Civil Court Ameen, or other Officer, the amount necessary for the service of a notice upon the defaulter as hereinafter provided.

Form of application.

Cost of notice upon defaulter to be deposited by distrainor.

CXXIV. Immediately on receipt of the application, the Civil Court Ameen, or other Officer, shall transmit a copy of it to the Collector; and shall serve a notice, (which shall be in the form (G) contained in the Schedule to this Act, or to the like effect), on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice. He shall, at the same time, send to the Collector for the purpose of being put up in his Office, and, if in the North-Western Provinces, in the cutcherry of the tahsíldár, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited. The proclamation shall contain a description of the property, the demand for which it is to be sold, and the place where the sale is to be held.

Procedure by Civil Court Ameen, &c., on receipt of application.

CXXV. If a suit shall be instituted before the Collector in pursuance of the aforesaid notice, the Collector shall transmit to the Civil Court Ameen, or other Officer, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit; and, on such certificate being received by, or presented to, the Ameen or other Officer, he shall suspend proceedings in regard to the sale of the distrained property.

Ameen to suspend sale on receipt of Collector's certificate of the institution of a suit.

CXXVI. A person whose property has been distrained in the manner hereinbefore provided, may institute a suit to contest the demand of the distrainor immediately after the distraint of his property, and before the issue of notice of sale. When such suit is instituted, the Collector shall proceed in the manner prescribed in the last preceding Section. If, thereafter, application for the sale of the property is made to the Civil Court Ameen, or other Officer, he shall transmit a copy of the application to the Collector, and suspend further proceedings pending the decision of the case.

Suit to contest distrainor's demand before issue of notice of sale.

CXXVII. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with security* binding himself to pay whatever sum may be adjudged to be due from him, with

Distress to be withdrawn on receipt of Collector's certificate that

* Board's Rule III.

the owner has executed a bond with security to pay amount of decree with interest and costs.

interest and costs of suit; and, when such bond is executed, the Collector shall give to the owner of the property a certificate to that effect, or, if so requested, shall serve the distrainor with notice of the same; and, upon such certificate being presented to the distrainor by the owner of the property, or served on him by order of the Collector, the property shall be released from distraint.

On expiration of period fixed in the proclamation of sale, if institution of suit to contest distrainor's demand have not been certified, sale may be proceeded with.

CXXVIII. On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainor has not been certified to the Civil Court Ameen, or other Officer, in the manner hereinbefore provided, he shall, unless the said demand, with such costs of the distress as shall be allowed by him, be discharged in full, proceed to sell the property, or such part of it as may be necessary, in the manner following.

Place and manner of sale of distrained property.

CXXIX. The sale shall be held at the place where the distrained property is deposited, or at the nearest gunj, bázár, hât, or other place of public resort, if the Civil Court Ameen or other Officer should be of opinion that it is likely to sell there to better advantage. The property shall be sold by public auction in one or more lots, as the Officer holding the sale may think advisable; and, if the demand with the costs of distress and sale be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

If a fair price be not offered, sale may be postponed to another day, and shall be then completed at whatever price may be offered.

CXXX. If, on the property being put up for sale, a fair price, in the estimation of the Officer holding the sale, be not offered for it, and the owner of the property, or some person authorized to act on his behalf, apply to have the sale postponed until the next day, or the next market day if a market be held at the place of sale, the sale shall be postponed until such day, and shall be then completed at whatever price may be offered for the property.

Payment of purchase money.

CXXXI. The price of every lot shall be paid for in ready money at the time of sale, or as soon after as the Officer holding the sale shall think necessary; and, in default of such payment, the property shall be put up again and sold. When the purchase money has been paid in full, the Officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale.

CXXXII. From the proceeds of the sale of distrained property, the Officer holding the sale shall make a deduction, at the rate of one anna in the Rupee, on account of the costs of the sale, and shall transmit the amount to the Collector in order that it may be credited to Government. He shall then pay, to the distrainor, the expenses incurred by the distrainor on account of the distress, and of the issue of the notice and proclamation of sale prescribed in Section cxxiv., to such amount as, after examination of the statement of expenses furnished by the distrainor, he shall think proper to allow. The remainder shall be applied to the discharge of the arrear for which the distraint was made, with interest thereon up to the day of sale, and, if there be any overplus, it shall be delivered to the person whose property shall have been sold.

Officers holding sales prohibited from purchasing.

CXXXIII. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such Officers, are prohibited from purchasing, either directly or indirectly, property sold by such Officers.

All irregularities to be reported to the Collector.

CXXXIV. Civil Court Ameens, and other Officers as aforesaid, are required to bring to the notice of Collectors any material irregularities committed by distrainors under color of this Act; and if, in any case, on proceeding to hold a sale of property, the Civil Court Ameen or

Officer not to proceed to sale, if he find that defaulter has not received due notice.

other Officer shall find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, and the Collector shall direct the issue of another notice and proclamation of sale under Section cxxiv., or pass such other order as he may think proper.

Recovery of expenses if Ameen proceeds to place of sale and no sale takes place.

CXXXV. When a Civil Court Ameen or other Officer has proceeded to any place for the purpose of holding a sale, and no sale takes place, either for the reason stated in the last preceding Section, or because the demand of the distrainor has been previously satisfied, (no intimation of such satisfaction having been given by the distrainor to the Civil Court Ameen or other Officer,) the charge of one anna in the Rupee on account of expenses, shall be leviable and shall be calculated on the estimated value of the distrained property. If the demand of the distrainor be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property and may be recovered by the sale of such portion thereof as may be necessary. In every other case it shall be paid by the distrainor, and may be recovered by attachment and sale of the property of the distrainor under the warrant of the Collector. Provided always that, in no case, shall a larger amount than ten Rupees be recoverable under this Section.

Proceedings of Civil Court Ameens, &c, subject to revision and orders of Collectors.

CXXXVI. All proceedings under this Act of the Civil Court Ameens, and other Officers as aforesaid, shall be subject to the revision and orders of the Collectors, and the Collectors, with the sanction of the Boards of Revenue* may require the submission of such periodical reports and statement of business performed by the Civil Court Ameens and other Officers as may be thought necessary.

Second proclamation of sale.

CXXXVII. When a suit has been instituted to contest the demand of a distrainor, and the property has not been released on security, if the demand, or any portion of it, shall be adjudged to be due, the Collector shall issue an order to the Civil Court Ameen, or other Officer, authorizing the sale of the property, and, on the application of the distrainor, (which shall be made within five days from the receipt of such order by the Civil Court Ameen or other Officer), such Ameen, or Officer, shall publish a second proclamation in the manner prescribed in Section cxxiv., fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation; and, unless the amount adjudged to be due, with the costs of distress, be paid intermediately, shall proceed to sell the property in the manner hereinbefore provided.

Procedure after institution of suit to contest distrainor's demand.

CXXXVIII. In all suits instituted to contest the demand of a distrainor, the distrainor shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount, under the foregoing provisions of this Act. If the demand, or any part thereof, is found to be due, the Collector shall make a decree for the amount in favor of the distrainor, and the amount may be recovered by sale of the property, as provided in the last preceding Section, if the distress has not been withdrawn, and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter, or, if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety. If, on the other hand, the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favor of the plaintiff as the circumstances of the case shall seem to require.

* See Board's Rule XXVI and Appendix K.

Any person whose property has been distrained for arrears of rent alleged to be due from another, may institute a suit against the distrainor, &c.

CXXXIX. If any person shall claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainor and such other person, to try the right to the property, in the same manner, and under the same conditions, as to the time of instituting the suit, and to the consequent postponement of sale, as a person, whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand. When any such suit is instituted, the property may be released, upon security being given for the value of the same. If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainor. If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages, (if any), as the circumstances of the case may seem to require. Provided always that no claim to any produce of land liable to distraint under this Act, which, at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.

Proviso.

Procedure if distrainors's right to distrain be disputed.

CXL. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the *right to distrain* for such arrear is claimed by, or on behalf of, any person other than the distrainor on the ground of such other person being, actually, and in good faith, in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such other person before and up to the time of the commencement of the suit shall be enquired into, and the suit shall be decided according to the result of such enquiry. Provided always that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court, if instituted within one year from the date of the decision.

Persons prevented from suing in time to save their property from sale, may sue for damages.

CXLI. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing suit to contest the demand, or to try the right to the property as the case may be, within the period allowed by Sections cxxiv. and cxxxix., and his property is, in consequence, brought to sale, he may nevertheless institute a suit under this Act to recover damages for the illegal distress and sale of his property.

Also persons aggrieved by any illegal act of distrainor.

CXLII. If any person empowered to distrain property or employed for the purpose, under a written authority, by a person so empowered, shall distrain, or sell, or cause to be sold, any property, for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act; or, if any distrained property shall be lost, damaged, or destroyed by reason of the distrainor not having taken proper precaution for the due keeping and preservation thereof; or, if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act; the owner of the property may institute a suit, under this Act, to recover damages for any injury which he may have thereby sustained.

Unlawful distraint.

CXLIII. If any person not empowered to distrain property under Sections cxii. and cxiv. of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distrain, or sell, or cause to be sold, any property under color of this Act, the owner of the property may institute a suit under this Act to recover damages from such person for any injury which he may have sustained from the distraint or sale. The said

person shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence, in addition to any damages which may be awarded against him in such suit.

Time for commencing suits for damages.

CXLIV. Provided always that any suit which may be instituted under any of the last three Sections, shall be commenced within three months from the date of the occurrence of the cause of action.

Resistance of distraint.

CXLV. If any person shall resist a distraint of property duly made under this Act, or shall, forcibly or clandestinely, remove any distrained property, the Collector, upon complaint* being made within fifteen days from the date of such resistance or removal, shall cause the person accused to be arrested, and, if the offence be proved, and the offender be the owner of the property, shall order him to be imprisoned in the civil jail for six months, or until the whole arrear due to the distrainor, with all expenses and costs, shall sooner be paid, or levied by distress and sale of the property of the offender under warrant of the Collector. If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainor the value of the same, and shall further be liable to a fine not exceeding one hundred Rupees, or in default of payment thereof to imprisonment for a period not exceeding two months.

Service of process.

CXLVI. Every process issued by a Collector under this Act shall be under the seal and signature of the Collector, and shall be served or executed by the Názir, or by such other Officer as the Collector may direct, at the cost of the party at whose instance it is issued. The amount of such cost, and, in the case of summons to a witness, any sum required for the travelling expenses of such witness, shall be deposited in Court before the process is issued. Provided that, if, in any case, the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Resistance of process.

CXLVII. Any resistance or opposition to the lawful process of a Collector under this Act, may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of Civil Justice†. When, in any such case, the offender is not present in Court, the Collector may summon him to answer to the charge, and if, after due service of the summons, he fail to attend, may issue a warrant for his apprehension. Orders passed by Collectors under this Section, shall not be deemed to be orders relating to the trial of suits or to the execution of decrees within the meaning of Section cli.

Collector competent to hold a Court in any part of his jurisdiction.

Proviso.

CXLVIII. It shall be competent to the Collector to hold a Court for hearing and determining suits under this Act, in any place within the limits of his district or local jurisdiction, provided that every hearing and decision shall be in open Court, and that the parties to the suit, or their authorized agents, shall have had due notice to attend at such place.

Agents or mukhtárs.

CXLIX. Any person may practise as an agent or mukhtár in a Court held by a Collector under this Act without any formal licence from the Collector. But it shall be competent to the Collector to prohibit any person, who has been convicted by a competent Court of a criminal offence, or who has been found guilty of fraudulent or dishonest conduct in the discharge of his duty as agent or mukhtár, to practise as an agent or mukhtár in his Court. When any agent or mukhtár is charged by the Collector, or any other person, with fraudulent or dishonest conduct in the discharge of his duty, the Collector shall proceed in the manner prescribed in Section iv., Act XVIII. of 1852, ‡ or any other law for the time being in force for the trial of charges against pleaders.

CL. *Repealed. Section xix., Act VI., 1862, (B. C.) substituted.*

* On an 8 anna stamp. see Board's Rule IV.
† Penal Code, cap. X.
‡ See Appendix (D.)

CLI. In the performance of their duties under this Act, the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners and the Boards of Revenue, and the Deputy Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate. All *orders* passed by a Collector under this Act, *not being judgments in suits, or orders passed in the course of suits, and relating to the trial thereof*, or *orders passed after decree, and relating to the execution thereof*, shall be appealable to the Commissioner: and all such orders passed by a Deputy Collector, shall be appealable to the Collector; but no judgment of a Collector or Deputy Collector in any suit, and no order of a Collector or Deputy Collector passed in any suit and relating to the trial thereof, or after decree, and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

Collectors and Deputy Collectors to be subject to direction and control of the Commissioners and the Boards of Revenue.

No appeal from orders of Collectors and Deputy Collectors in certain cases

300. According to this Section, a tenant, whose tenure has been sold in execution of a decree for rent accruing on that tenure, under Section cv., cannot bring an action in the Civil Court to set aside that sale. The Collector's order in this respect is final.—*Ratan Maní Dásí, 16th March*, 1864.

301. A judicial order passed by a Collector, is open to appeal under the provisions of Sections clx. and clxi., though it has reference to the execution of a decree.—*R. Solano, 19th April*, 1864.

CLII. Every appeal against the order of a Collector, shall be presented to the Commissioner within thirty days, and every appeal against the order of a Deputy Collector, shall be presented to the Collector within fifteen days, from the date of the order. Orders passed in appeal by a Commissioner or a Collector shall not be open to any further appeal, but the Board of Revenue or the Commissioner may call for any case, and pass such orders thereon as they may think proper.

Time for presenting appeals from orders.

302. An appeal presented by mistake to the Judge, instead of the Commissioner, cannot, with reference to the terms of this Section, be presented subsequently to the Commissioner, if the 30 days allowed by law from the date of the order appealed against, is expired. But the appellant has a remedy in a regular suit either under the provisions of Section xxiii. of this Act, or in the Civil Court as the case may be.—*C. J. Phillip, 3rd June*, 1863.

CLIII. In suits under Clauses 2, 4, and 7. of Section xxiii., and under Section xxiv. of this Act, tried and decided by a Collector, if the amount sued for, or the value of the property claimed, does not exceed one hundred Rupees, the judgment of the Collector shall be final, and not open to revision or appeal except as hereinafter provided, unless, in any such suit, a question of right to enhance, or otherwise vary, the rent of a ryot or tenant, or any question relating to a title to land, or to some interest in land, as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in Sections clx. and clxi. of this Act.

No appeal from any decree of Collector for money below 100 Rs., unless the decision involve some question of right to enhance rents or some question relating to a title to land.

303. The denial by a ryot of the execution of a kabúlyat in a suit for arrears of rent under Section xxiii., Clause 4, does not make the judgment of the Collector open to appeal under Section clx. and clxi.—*Hari Náth Ghose, 14th April*, 1863.

CLIV. In suits in which the judgment of the Collector is final as provided in the last preceding Section, the Collector may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of, or could not produce at the time of trial.

In suits not open to appeal, Collector may grant a re-hearing upon the discovery of new evidence, &c.

CLV. When any such suit as aforesaid, in which, if tried and decided by a Collector, the judgment of the Collector would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector, shall lie to the Collector.

Appeal from decision of Deputy Collector.

CLVI. The petition of appeal shall be written on Stamp paper of eight annas value, and shall be presented to the Collector within fifteen days from the date of the decree, provided that such time as may be requisite for procuring a copy of the decree appealed against, shall not be reckoned as part of the fifteen days.

Petition of appeal to be on Stamp paper, &c.

304. In affirming the decision of the Judge below, which held that the appeal lay to the Collector and not to the Zillah Court, it was doubtful whether the High Court could allow the special appellant further time for appealing to the Collector.—*Rájbhallab Bhanj, 10th August*, 1863.

CLVII. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons. If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an agent, the appeal shall be dismissed for default. If the appellant shall appear and the respondent shall not appear in person or by an agent, the appeal shall be heard *ex parte*.

Procedure in appeal.

CLVIII. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector for the re-admission of the appeal, and, if it shall be proved to the satisfaction of the Collector that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal.

Re-admission of appeal.

CLIX. After hearing the appeal, the Collector shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final.

Judgment in appeal.

CLX. In all suits other than those in which, when tried and decided by a Collector, the judgment of the Collector is declared to be final, or, when tried and decided by a Deputy Collector, an appeal is allowed to the Collector, an appeal from the judgment of the Collector or Deputy Collector shall lie to the Zillah Judge; unless the amount or value in dispute exceed five thousand Rupees, in which case the appeal shall lie to the High Court.

In what suits appeal to lie to Zillah Judge.

To High Court

305. Judgments passed in appeal by the Zillah Judges under this Section, are open to special appeal.—*Hallodhar Biswás*, (*S.*) *30th March*, 1861.

306. The misconstruction by the Court of a written document which forms the basis of a plaintiff's claim or a defendant's answer under this Act, is a substantial error in Law, and consequently may be made the ground of *special appeal.—Rájá Pránkishn Singh Sarma*, (*S.*) *1st October*, 1861.

307. If a misapprehension by a Judge of the finding of a Lower Court, cause an error in procedure by which a party to the suit may be prejudiced, a special appeal will lie.—*Dina Náth Mukharjyá, 3rd July*, 1863.

308. In special appeal the High Court can only interfere when the Lower Court finds on no evidence, or on what is not legal evidence.—*Rám Sundar Sirkár, 3rd March*, 1863.

309. By Section 372. Act VIII. of 1859, it is enacted "that special appeal shall lie from all *decisions* passed in regular appeals by the subordinate Court, and not merely from all *decrees*." Section 373 says, that the application for appeal shall be accompanied by copies of the *judgment and decree* of the Lower Court, and Section 376, which speaks of reviews of judgments, uses the words "decree" and "judgment" in such a manner as to lead us to think that by the word *decision* the Legislature meant the decree and judgment taken together, and not simply the decree unexplained by the judgment.—*Mahárání Indrajít Kunwar, 19th February*, 1863.

310. When the jurisdiction of the Collector and of the Civil Judge of a district are not conterminous, suits will be instituted before the Collector in whose jurisdiction the land which is the subject of the suit lies, but the appeal will lie to the Judge in whose civil jurisdiction the land is situate.—*Latíf Uunissá Bibí 22nd August*, 1862.

311. Parties not before the Lower Appellate Court, cannot be heard in special appeal.—*Bykunth Rám Sáhu, 1st July*, 1864.

Rules regarding presentation and hearing of appeals.

CLXI. The petition of appeal shall be wrtiten on the stamp paper prescribed for appeals from the subordinate Civil Courts, with reference to the amount or value of the property involved in the appeal; and the rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the Zillah Judge or High Court under this Act.

312. Where an appeal has been made by mistake to the Collector, instead of to the Judge and so the time allowed by the Law ordinarily for an appeal to the Judge is lost, the Judge should exercise the discretion allowed to him by the Law, and admit the appeal after time.—*Bhoja Hari Dhárá Singh, (S.)* 14*th June*, 1862.

313. A Judge is competent to review his judgment in an Act X. case, as Act VIII. of 1859 has been declared to apply, as far as it is applicable, to suits under the former Act, and Section ccclxxvi. of Act VIII. allows a Judge under certain conditions, to review his judgment.—*Shekh Najíb, (S.)* 11*th June*, 1862.

314. A Judge upon review, cannot, however, allow a plaintiff to shift his ground, and set up a new case.—*Naru Hari Mahant*, 12*th August*, 1862.

CLXII. *Repealed. Section xx., Act VI.*, 1862, (B. C.) *substituted.*

Except as above, Collector not to exercise jurisdiction in respect to lands situate beyond his district.

CLXIII. Except as provided in the last preceding Section, no Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the District to which he is appointed, by reason of such lands forming part of an estate the revenue of which is paid into the treasury of the said district.

Deputy Collector entrusted with Police functions, not to exercise judicial powers under this Act.

CLXIV. No Deputy Collector appointed under Regulation IX. 1833 of the Bengal Code shall exercise any judicial powers or other jurisdiction under this Act if entrusted with any Police functions.

What powers to be exercised by Assistants to Collectors.

CLXV. Assistants to Collectors shall not exercise any powers under this Act unless invested by Government with the powers of Deputy Collectors, in which case they may exercise the powers hereby assigned to Deputy Collectors.

Saving of rights of proprietors in respect of pátní tálúk, &c., under Regulation VIII., 1819.

CLXVI. Nothing contained in this Act shall be held to affect the right vested in proprietors of land under direct engagements with Governments, bringing to sale for arrears of rent, pátní tálúks and other similar tenures under the provisions of Regulation VIII. 1819.*

Commencement of Act.

CLXVII. This Act shall commence and have effect from and after the 1st day of August, 1859.

"Civil Jail."

"Názir"

"Number."

"Gender."

CLXVIII. The words "Civil Jail" as used in this Act shall include the Civil Jail of the zillah and any place appointed by the Executive Government for the confinement of prisoners by any Court constituted under this Act. The word "Názir" shall include any Officer of a Court authorized to serve or execute its process. Unless there be something in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females.

* *Vide* Appendix (E.)

SCHEDULE.

FORM A. *(See Section xliii & xliv.)*

FORM OF SUMMONS TO DEFENDANT.

No. (of suit) dated

In the Court of

A. B., Plaintiff

[*Name, description, and address of Plaintiff.*]

C. D., Defendant.

[*Name, description, and address of Defendant.*]

Whereas the said A. B. has brought a claim against you in this Court for *(here specify particulars of claim as given in the statement,)* you are hereby required to appear in person in this Court on the day of [*if not specially required to appear in person, state, "in person or by an agent who has personal knowledge of the subject or who shall be accompanied by a person who has such knowledge"*] to answer the above-named plaintiff, and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM B. *(See Section xlix.)*

FORM OF WARRANT OF ARREST.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of

Whereas the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 18

FORM C. *(See Section xlix.)*

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[*Name, description, and address of Plaintiff.*]

C. D., Defendant.

[*Name, description, and address of Defendant.*]

Whereas the said A. B. has brought a claim against you in this Court for *(here specify particulars of claim as given in the statement)* and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court, all documents on which you may intend to rely in support of your defence.

FORM D. *(See Section li.)**

FORM OF SECURITY BOND FOR APPEARANCE OF DEFENDANT.

Whereas A. B., plaintiff, has instituted a suit in the Court of the Collector of against C. D. defendant, and the said C. D. has been required to give security for his appearance at any time when called on while the suit is depending and until execution of the decree, I, E. F., hereby declare myself surety for the said C. D.'s appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said C. D. may be liable under the decree. *(If the suit be for the delivery of paper or accounts, specify some sum to be fixed by the Collector.)*

* On an 8 annas Stamp, see Board's Rule III.

FORM E. *(See Section xciii.)*

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of——

Whereas C. D. was directed by a decree of this Court, under date the day of 185 , to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to apprehend the said C. D., and to bring him with all convenient speed before this Court to be dealt with according to law.

FORM F. *(See Section xcviii.)*

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of——

Whereas C. D. was directed by a decree of this Court under date the day of 185 to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to levy the said sum of and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said C. D. as (is described in the list annexed, and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said C. D., on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

FORM G. *(See Section cxxiv.)*

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of Commissioner for sale of distrained property.

A. B., Distrainor.

[*Name, description, and address of the owner of the property.*]

Whereas the said A. B. has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said A. B., or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 18

NOTE.—FOR FORM OF PROCLAMATION OF DEFENDANT (*Section lii.*), AND SUMMONS TO WITNESS (*Section lxvi.*), *see Appendices H. and I. to Board's Rules.*

ACT VI. OF 1862.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

(Received the assent of the Governor General on the 1st May, 1862.)

AN ACT *to amend Act X. of* 1859 *(to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.)*

Preamble.

WHEREAS it is expedient to amend Act X. of 1859, so far as the same relates to the provinces subject to the Government of Bengal; It is enacted as follows:—

Repeals Sections 26, 40, 74, 79, 86, 150, and 162 of Act X. of 1859.

I. Sections xxvi., xl., lxxiv., lxxix., lxxxvi., cl., and clxii. of Act X. of 1859 are hereby repealed, except as regards suits under the said Act X. of 1859 instituted prior to the passing of this Act.

The Court may in certain cases award to the plaintiff additional damages not exceeding 25 per cent.

II. In any suit hereafter to be brought for rent under Act X. of 1859, if it shall appear to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount due by him, and that he has not, before the institution of the suit, tendered such amount to the plaintiff or his duly authorized agent, or, in case of refusal of the plaintiff or such agent to receive the amount tendered, has not deposited such amount with the Collector before the institution of the suit in manner hereinafter mentioned, it shall be lawful for the Court to award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per cent. on the amount of rent decreed, as the Court may think fit. These damages, if awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of twelve per cent. per annum from the date of decree until payment thereof, and shall be recoverable from the defendant in like manner as sums decreed to be paid by defendants under Act X. of 1859 are recoverable.

315 Damages under this Section cannot be recovered unless specially alleged and claimed in the plaint. The absence of reasonable or probable cause for defendant withholding the rent is a matter incumbent on the plaintiff to prove.—*Hara Mohan, 9th September,* 1863. *Boldi Chandra Dutt, 22nd April* 1864.

The Court may award compensation, not exceeding 25 per cent. on the amount sued for, to a defendant improperly sued

III. In any suit hereafter to be brought for rent under Act X. of 1859, if it shall appear to the Court that the plaintiff has instituted the suit against the defendant without reasonable or probable cause, or that the defendant, before the institution of the suit, duly deposited with the Collector, in the manner hereinafter mentioned, the full amount which the Court shall find to have been due to the plaintiff at the date of such deposit, it shall be lawful for the Court to award to the defendant, by way of compensation, such sum, not exceeding twenty-five per cent. on the whole amount claimed by the plaintiff, as the Court may think fit, and such sum, with interest at the rate of twelve per cent. per annum until payment thereof, shall be recoverable from the plaintiff, in like manner as sums decreed to be paid by defendants under Act X. of 1859 are recoverable.

Under-tenant or ryot may, after tender, &c., pay into Court, without any action being brought against him, what he admits to be due to his zemindar, &c.

IV. If any under-tenant or ryot shall, at the mal cutcherry for the receipt of rents, or other place where the rents of the land held or cultivated by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender, to the zemindar or other person in receipt of the rent of such land, and, if the amount so tendered shall not be accepted, and a receipt in full forthwith granted, it shall be lawful for the under-tenant or ryot, without any suit having been instituted against him, to

deposit such amount in the Collector's Court, to the credit of the zemindar or other person aforesaid; and such deposit shall, so far as the under-tenant or ryot and all persons claiming through or under him are concerned, in all respects, operate as and have the full effect of, a payment then made by the under-tenant or ryot, of the amount deposited, to such zemindar or other person.

Payment into Court to have effect of payment to zemindar or other person entitled.

V. The Collector shall receive such deposit on the application of the under-tenant or ryot, or his agent, made in writing upon paper bearing a stamp of such value as would be necessary on the institution of a suit for arrears of rent under Section xxxvii. of Act X. of 1859* for an amount equal to that which it is intended to deposit, and, on the under-tenant or ryot, or his agent, making a declaration in the form, or as nearly as circumstances will admit, in the form, set forth in the Schedule (A) hereto annexed, the Collector shall give a receipt for the same. If the declaration shall contain any averment which the person making the declaration shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.† Upon receiving the money so deposited, the Collector shall issue a notice to the person to whose credit it has been deposited, in the form set forth in the Schedule (B) hereto annexed, and such notice shall be served by the Collector, without the payment of any fee, either upon the person to whom it is addressed, or upon his náib, gomáshtah, or other agent, and, in the absence of any such agent, it shall be served by sticking up a copy of the same in the Office of the Collector, and another copy at the mál cutcherry for the receipt of rents, or other place where the rents are usually paid for the land in respect of which the money has been deposited. If the person to whom such notice is issued, or his duly authorized agent, shall appear and apply that the money in deposit be paid to him, it shall be immediately made over to him.

Proceedings on making a payment into Court and the drawing out the money.

VI. Whenever a deposit shall have been made under the provisions of this Act, no suit shall be brought against the person making the deposit or his representatives on account of any rent which accrued due prior to the date of the deposit, unless such suit is instituted within six months from the date of the service of the notice in the fifth Section of this Act mentioned.

Suit for further balance to be instituted within six months of service of notice of deposit.

VII. The defendant in any suit under this Act, or under Act X. of 1859 instituted after the passing of this Act, may, if he have duly tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as he shall consider to be due to the plaintiff, without paying in any costs incurred by the plaintiff up to the time of such payment, and such sum shall be immediately paid out of Court to the plaintiff. If, after such payment, the plaintiff elects to proceed in the suit, and ultimately recovers no further sum than shall have been paid into Court, the plaintiff shall be charged with the whole costs of the suit incurred by the defendant; but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall be charged with the whole costs of the suit.

After action brought defendant may pay into Court, without costs, money tendered before action brought.

Costs if plaintiff goes on and recovers no more.

VIII. The defendant in any suit under this Act, or under Act X. of 1859 instituted after the passing of this Act, may, without having made any tender before action brought, pay into Court such sum of money as he shall consider to be due to the plaintiff, together with the costs (to be fixed by the Court if necessary, as of a suit originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such

If no previous tender has been made, defendant may pay into Court what he admits to be due with costs on that sum.

* Repealed. For proper Stamp, see Board's Rule IV
† Penal Code, Cap XI

payment, and such sum shall immediately be paid out of Court to the plaintiff. If, after such payment, the plaintiff elects to proceed in the suit and ultimately recovers no further sum than shall have been paid into Court, he shall be charged with all costs incurred by the defendant subsequently to such payment; but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall, (including the sum paid into Court by him in the first instance on account of costs), be charged with costs as upon a suit originally instituted for the whole amount for which the plaintiff ultimately obtains a decree.

Costs if plaintiff goes on with the suit.

IX. Every proprietor of an estate or tenure, or other person in receipt of the rents of an estate or tenure, has a right of making a general survey and measurement of the lands comprised in such estate or tenure, or any part thereof, unless restrained from doing so by express engagement with the occupants of the lands. If any person intending to measure any land which he has a right to measure, is opposed in making such a measurement by the occupant of the land, or if any under-tenant or ryot, having received notice of the intended measurement of land held or cultivated by him which is liable to such measurement, refuses to attend and point out such land, such person may make application* to the Collector, and the Collector shall thereupon proceed to inquire into the case, in the manner provided for suits under Act X. of 1859, and shall pass a decision either allowing or disallowing the measurement, and, if the case so require, enjoining or excusing the attendance of any such under-tenant or ryot. If any under-tenant or ryot, after the issue of an order enjoining his attendance, neglects to attend and to point out the land, it shall not be competent to him to contest the correctness of the measurement made or any of the proceedings held in his absence.

Survey and measurement of lands.

316. A lessee under the Court of Wards can exercise the powers given by this Section.—*Robert Watson and Co*, *7th July*, 1864

X. If the proprietor of an estate or tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands or any part of the lands comprised therein, such proprietor or other person may petition * the Collector in respect of the lands which he cannot measure as aforesaid, and the Collector thereupon, and on the necessary costs being deposited with him by the applicant, shall proceed to measure the land and to ascertain and record the names of the persons in occupation of the same, or, on the special application*† of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine, and record the tenures and under-tenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable. The provisions of Section lxvii. of Act X. of 1859 shall apply to any proceeding of the Collector instituted under this Section. If, after due enquiry, the Collector shall be unable to measure the land, or to ascertain or record the names of the persons in occupation of the same, or if he shall, (in any case in which such special application shall have been made as aforesaid), be unable to ascertain who are the persons having tenures or under-tenures in such lands or any part thereof, then, and in any such case, he may declare the same to have lapsed to the party on whose petition he has made the enquiry. If any person, within fifteen days after the Collector shall have recorded the name of such person as being in occupation of such land or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearance, and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms or conditions as he may think proper, alter or rescind his declaration according to the justice of the case. Save as aforesaid, the decision of the Collector on all matters

Measurement of lands, where it cannot be ascertained who are the persons liable to pay rent

* For proper Stamp, see Board's Rule IV.,
† Board's Rule XXVII.

enquired into and determined by him under this or the last preceding Section, shall be final, unless the same shall be reversed on appeal therefrom to the Civil Court. Such appeals shall lie to the Zillah Judge or to the High Court, subject to the provisions and conditions contained in Sections clx. and clxi. of Act X. of 1859.

Measurements to be made by the pergunnah pole.

XI. All measurements made under this Act shall be made by the standard pole of measurement of the pergunnah in which the land is situated.

317. The standard measure of the Pergunnah is to be ascertained by judicial enquiry.—*Haro Mohan Mukharjyá*, 18*th August*, 1864.

Form of plaint in suits for arrears of rent.

XII. In any suit hereafter to be brought for the recovery of an arrear of rent, the statement shall specify the name of the village and estate and of the pergunnah or other local division in which the land is situate, the yearly rent of the land, the amount, (if any), received on account of the year for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due. If the arrear is alleged to be due from any ryot, the statement shall further specify the quantity of land, and, where fields have been numbered in a Government survey, the number, (if it be possible to give it), of each field.

Order under Section lviii. of Act X. of 1859 to set aside judgment shall be final, but rejection of application to set it aside shall be appealable.

XIII. In all cases in which the Collector shall pass an order under Section lviii. of Act X. of 1859 for setting aside a judgment, the order shall be final; but in all appealable cases in which the Collector shall reject the application, an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable: provided that the appeal be preferred within the time allowed for an appeal from such final decision, and be written upon stamp paper of the value prescribed for petitions to the Court to which the appeal lies where a stamp is required for petitions.

Fees to agents and mukhtárs.

XIV. So much of Section lxxi of Act X. of 1859 as directs that no fee for any agent shall be charged as part of the costs of suit in any case under the Act, is hereby repealed. In awarding costs to either party in any suit hereafter to be brought under the said Act or under this Act, it shall be competent for the Collector to award to such party, on account of the fees of any agent or mukhtár employed by him, such a sum, not exceeding the rate of fee chargeable under the provisions of Section vii. of Act I. of 1846 for pleaders in the Civil Courts, as the Collector may direct.*

Language in which the Collector is to write his judgment.

XV. The Collector shall pronounce† judgment in all cases tried under this Act or under Act X. of 1859 in open Court. The judgment shall be written in the vernacular language of the Collector, and shall contain the reasons for the same, and shall be dated and signed by the Collector at the time when it is pronounced. Provided that if the vernacular language of the Collector be not English, and the Collector be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, and prefer to write his judgment in it, the judgment may be written in English.

318. By Section 372. Act VIII. of 1859, it is enacted that "special appeal shall lie from all *decisions* passed in regular appeals by the subordinate Court, and not merely from all *decrees*." Section 373 says, that the application for appeal shall be accompanied by copies of the *judgment and decree* of the Lower Court, and Section 376, which speaks of reviews of judgments, uses the words "decree" and "judgment" in such a manner as to lead us to think that by the word *decision* the Legislature meant the decree and judgment taken together, and not simply the decree unexplained by the judgment.—*Mahárání Indrajít Kunwar*, 19*th February*, 1863.

Attachment before judgment.

XVI. The provisions relating to attachment before judgment contained in Sections lxxxi. to xc. both inclusive, of Act VIII. of 1859‡ (*for simplifying the Procedure of the Courts of Civil Judi-*

* See Board's Rule IX.
† Board's Rule V., Clause 15-17, and Rule VI.
‡ See Appendix B.

cature not established by Royal Charter) are hereby extended to all suits hereafter to be brought under this Act or Act X. of 1859.

Execution to issue at time of decree on oral application: afterwards on application in writing.

XVII. Process of execution* in any suit hereafter to be instituted under this Act or under Act X. of 1859 may be issued against either the person or the property of a judgment debtor, but process shall not be issued simultaneously against both person and property. It may be issued on the oral application of the judgment creditor, his agent, or mukhtár, made at the time the judgment is pronounced, or, thereafter, upon the written application† of the judgment creditor, his agent, and mukhtár, presented to the Court by which the judgment was given. Process of execution against the person or moveable property of a debtor shall be in the Form (E) or the Form (F) contained in the Schedule to Act X. of 1859, or in a form as nearly resembling those forms as the circumstances of the case may admit.

319. Effect must be given to a decree at once without waiting to see the result of an appeal.—*G. Gregory, 8th April,* 1864.

320. In a suit for arrears of rent, the decree ought not to direct in what mode execution should issue.—*Syámá Charan Chakravartti, 4th August,* 1862.

If person is arrested under Section cxlv. of Act X. of 1859, case to be disposed of at once.

XVIII. If any person shall, after the date of the passing of this Act, be arrested under Section cxlv. of the said Act X. of 1859, he shall be brought before the Collector with all convenient speed, and the Collector shall proceed forthwith to try the case. If the case cannot be at once heard and determined, the Collector may, if he think fit, require the person arrested to give security for his appearance whenever the same is required. In default of such security, the person arrested shall be committed to the civil jail till the case is heard.

Deputy Collector's powers.

XIX. All the powers vested in the Collector by any of the Sections of this Act or of Act X. of 1859, may be exercised by any Deputy Collector in cases referred to him by a Collector, and, in all cases, without such reference, by any Deputy Collector placed in charge of any Sub-division of a District, or who is specially authorized by Government to receive such cases; and all applications and reports allowed or required by the said Act X. of 1859, or by this Act, to be made to the Collector, may be made to any Deputy Collector having such local jurisdiction or such special authority as aforesaid.

In what Court suits are to be instituted.

XX. Suits under this Act, or under Act X. of 1859, shall be preferred in the Revenue Office of the District, or, when a Sub-division of a District has been placed under the jurisdiction of a Deputy Collector, in the Revenue Office of the Sub-division, in which the cause of action shall have arisen, or, when the cause of action shall have arisen within the limits of the local jurisdiction of any Deputy Collector not in charge of a Sub-division, but who has been specially authorized by Government to receive such suits, then in the Office of such last-mentioned Deputy Collector. Provided always that the Collector may withdraw any suit from any Deputy Collector, and try it himself, or refer it to another Deputy Collector. If the lands comprised in any tálúk, farm, or other tenure, or any lands held under one lease or engagement, or at one entire rent, in respect of which arrears of rent may be due, are situated in more than one District or Sub-division, or within the local limits of the jurisdiction of more than one Deputy Collector so specially authorized as aforesaid, the District, or Sub-division, or local limits, in which the greater part of such lands is situate, shall be held to be the District, or Sub-division, or local limits, in which the cause of action has arisen, and if any question shall be raised respecting the District, or Sub-division, or local limits, within which the greater part of the lands is situate, the Board of Revenue, or, if all the lands be situate in one District, the Collector of the District shall decide the question, and such decision shall be conclusive on the point of jurisdiction.

* Board's Rule XXVIII.
† For proper Stamp, see Board's Rule IV.

321. When the jurisdiction of the Collector and of the Civil Judge of a district are not conterminous, suits will be instituted before the Collector in whose jurisdiction the land which is the subject of the suit lies, but the appeal will be to the Judge in whose civil jurisdiction the land is situated.—*Latif Unnissa Bibi, Appellant, H. C., 22nd August, 1862.*

This Act to be read with Act X. of 1859.

XXI. This Act shall be read with and taken as part of Act X. of 1859, except as regards suits instituted thereunder before the passing of this Act.

SCHEDULE A.*

I, A. B, of, &c., do solemnly declare that I did personally (*or* by my Agent C. D.) on the day of tender payment to E. F at his Mál cutcherry (*or* at) the place where the rent of the lands at held or cultivated by me under or from the said E. F., are usually payable, of the sum of Company's Rupees as and for the whole amount due from me in respect of the rent of the said lands from the month of to the month of both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered (or to give me a receipt in full forthwith for the same.) And I do declare that to the best of may belief the sum of Company's Rupees so tendered and which I now desire to pay into Court, is the full amount which I owe the said E. F. on account of the rent of the said lands from the month of to the month of both inclusive, and that I owe the said E. F. no further sum on account of the rent of the said lands.

SCHEDULE B.†

Court of the Collector (or Deputy Collector) of
Dated the day of 18 .
To E. F. of, &c.

With reference to the within declaration, you are hereby informed that the sum of Company's Rupees therein mentioned, is now in deposit in this Court, and that the above sum will be paid to you or to your duly authorized Agent on application. And take notice that if you have any further claim or demand whatsoever to make against the said A.B. in respect of the rent of the said lands, you must institute a suit in Court for the establishment of such claim or demand within six calendar months from this date, otherwise your claim will be for ever barred.

RULES FOR THE GUIDANCE OF REVENUE OFFICERS IN THE ADMINISTRATION OF THE RENT LAWS.

PRESCRIBED BY THE BOARD OF REVENUE, L. P.

Sections lv. and lvi.

I. Suits and cases under Acts X. of 1859 and VI. of 1862, B. C., may be heard and decided at all times, when the office of a Collector is open for the despatch of general business. But it is incumbent on the Revenue Authorities to exercise a sound discretion in passing judgment in the absence of either of the parties in a case, at seasons when the Civil Courts are closed and the transaction of civil business is in a great measure suspended.

Section xxxiv.

II. If a Collector, during his absence from the station on duty, has left a Covenanted Deputy Collector or a Covenanted Assistant with the powers of a Deputy Collector in charge of the current duties of the office, it is competent to him, by a proceeding, to delegate to the officer so left in charge, the duty of deciding any cases that may be instituted under the provisions of these Acts or of distributing such cases amongst the officers authorized to decide the same.

* If this declaration is made by an Agent, it must be altered accordingly.
† This is to be by indorsement on a copy of the Declaration under Schedule A. made by the person paying the money into Court.

III. Security bonds in cases under Act X. of 1859, taken under the provisions of Sections li. and cxxvii., must be on stamp paper of the value of 8 annas. *(See Article 2, Schedule B. Regulation X. of 1862.)* They must be executed or acknowledged before the Collector or other Officer, before whom the case is. The acknowledgment of the party executing the bond should be noted by the deciding Officer on the bond. *Property* need not be pledged by either party; the security of a person of substance is what is required; but when objection to the sufficiency of the security is made by the opposite party, the authority before whom the bond is brought should make enquiries before accepting it. The *registration* of security bonds in suits under Act X. of 1859, is not necessary.

Sections li. and cxxvii.

IV., 1. SUITS under Clause 4, Section xxiii, for arrears of rent on account of land, &c., *paying revenue to Government*, and suits under Section xxiv. for money in the hands of an agent of *such lands*, may be written on paper bearing a stamp of one-fourth the value prescribed for a PLAINT or APPEAL in civil suits,* in Article 11, Schedule B., Act X. of 1862. All other *suits* under Act X. of 1859 and Act VI. of 1862, B. C., *relating to lands paying revenue to Government* are to be written on a stamp of the value of 8 annas. *(See Note g.*†)

2. It is to be especially noted that these favorable provisions are applicable only to the case of *Revenue-paying lands*. *Suits* relating to *lands which pay no revenue to Government*, must be written on stamp paper of the full value* prescribed for suits instituted in the Civil Court. Dependent or subordinate tenures held without payment of *rent* to the zemindars, must not however be confounded with lands which pay no *revenue* to Government.

3. APPLICATIONS for the issue of a notice of enhancement under Section xiii. and for the summons of witnesses under Section lxvi (See *Second General Exemption, Article* 10, *Schedule B., Act X. of* 1862) and the WRITTEN AUTHORITY to a servant employed in distraint under Section cxx. may be on *plain paper*. So also may be any petition or application in relation to any suit under the rent laws of an amount or value less than fifty Rupees, (See *First General Exemption, Article* 10 *as above*) and an application for a copy of the translation of a judgment (*See Article V., Schedule B., Act X. of* 1862.) An application to a Collector to receive a deposit of rent under Section v. Act VI. of 1862, B. C., must be on a stamp of the value that would be necessary for the institution of a suit for an amount of arrears of rent on Revenue-paying lands equal to the sum to be deposited. All other *written applications* (as distinguished from *suits*) under those Acts, must be on an 8 anna stamp.

4. APPEALS to a Collector and a Commissioner under Section cli (See *Article* 10, *Schedule* B., *Act* x *of* 1862), and to a Collector under Section clv., must be on an 8 anna stamp.

5. In all suits instituted under Act X. of 1859 the value of the claim, calculated according to the Rules contained in the Note to Article 11, Schedule B., Act X. of 1862. paras. (a) (d) and (e), must be stated at the foot of the claim.

ACT X OF 1862 SCHEDULE B. ARTICLE 11.

* If the amount or value of the property claimed does not exceed					PROPER STAMPS *Rupees.*
			16	Rs	1
Above	16	Rs and not exceeding	32	,,	2
Do.	32	,, ,,	64	,,	4
Do.	64	,, ,,	150	,,	8
Do.	150	,, ,,	300	,,	16
Do.	300	,, ,,	800	,,	32
Do.	800	,, ,,	1,600	,,	50
Do	1,600	,, ,,	3,000	,,	100
Do.	3,000	,, ,,	5,000	,,	150
Do.	5,000	,, ,,	10,000	,,	250
Do.	10,000	,, ,,	15,000	,,	350
Do.	15,000	,, ,,	25,000	,,	500
Do.	25,000	,, ,,	50,000	,,	700
Do	50,000	,, ,,	1,00,000	,,	1,000
Do	1,00,000	,, ,,			2,000

† SPECIAL RULE FOR THE PRESIDENCY OF BENGAL.

(g) In suits instituted in the Courts of Collectors and Deputy Collectors under Act X. of 1859, for the recovery of arrears of Government Revenue or rent of land paying Revenue to Government, or of money in the hands of an Agent of such land, the statement of claim shall be written on paper bearing a Stamp of one-fourth the value prescribed for suits instituted in the Civil Courts, and in all other suits instituted in the Courts of Collectors and Deputy Collectors under the said Act, relating to lands paying Revenue to Government, the statement of claim shall be written on paper bearing a Stamp of the value of 8 Annas

V. The following are the Rules for the guidance of the Revenue Courts in taking evidence and in regard to Adjournments, the delivery of Judgments, &c. They are applicable chiefly in suits under Act X. of 1895.

Section lxvii.

1. Every witness shall be examined *vivâ voce* in open Court in the presence of the Presiding Officer.

2. The Presiding Officer shall not be engaged in any other business whilst the examination of a witness is going on, or whilst any documentary evidence is being read.

3. If, whilst the examination of a witness is going on, the Presiding Officer be compelled to attend to any other business, the examination of the witness shall stop as long as such other business is being attended to.

4. The examination of a witness shall not be interrupted for the purpose of enabling the Presiding Officer to attend to other business, unless such business be of an urgent nature.

5. If the evidence be not taken down by the Presiding Officer, he shall make a memorandum in his own handwriting of the substance of what each witness deposes. Such memorandum shall be written legibly in the vernacular language of the Presiding Officer, or in English, at the option of the Presiding Officer, if he is sufficiently acquainted with that language, and it shall be signed by the Presiding Officer, and dated, and shall form part of the record, and be always sent up with the record to the Appellate Court in the event of an appeal.

Section lx.

6. Pressure of business will form no excuse for not making the memorandum; physical inability (the nature of which shall be recorded) will alone be admitted as an excuse.

7. It shall be the duty of every Appellate Revenue Court to examine the memorandum of the evidence made by the Presiding Officer of the Court of First Instance, and to report to the Commissioner of the Division in every case in which, upon the hearing of an Appeal, it shall appear that the above rules have not been strictly and properly attended to.

8. The memorandum made by the Presiding Officer of the Court of First Instance shall, in all cases, form part of the documents to be sent up to the High Court on Special as well as on Regular Appeals.

9. After the examination of witnesses has commenced, the trial should be proceeded with until all the witnesses on both sides have been examined, (those of the party upon whom the *onus* of proof lies being examined first, and then those of the opposite party,) and an adjournment of the hearing shall not be allowed, except for sufficient cause, which shall be recorded.

Section lxxii.

10. Cases may arise in which, from the absence of an important witness, which could not be avoided by the party who requires his evidence, it may be necessary to adjourn the hearing. In such cases the evidence of the witnesses in attendance shall be taken, and the witnesses shall not be detained, or required to attend again, unless for some special reason to be recorded.

11. Whenever an adjournment takes place, it shall be for as short a time as possible, regard being had to the circumstances under which the adjournment is granted.

12. No adjournment shall be granted in any case except *vivâ voce* in open Court. The day to which the case is adjourned shall, in all cases, be stated publicly by the Presiding Officer in open Court, and the reason for the adjournment shall also be stated and recorded.

13. A list of all cases adjourned, and the day to which each case is adjourned, shall be affixed in some conspicuous part of the Court House.

14. If, after all the witnesses have been examined, the exhibits perused, and the parties heard by themselves or their pleader, the Presiding Officer be not prepared to deliver judgment, he may postpone the delivery thereof until a future day, of which due notice should be given, as required, in the case of Civil suits, by Section 183, Act VIII. of 1859. The witnesses shall not be detained.

15. The whole of the judgment, as written, shall be pronounced *vivâ voce* in open Court either in the language in which it is written, or in the language used in the Court.

Section xv. Act VI. of 1862.

16. The Presiding Officer of the Court in which the judgment is delivered, will be held responsible if the decree be not drawn up, in every case, within a reasonable time after the delivery of the judgment, or if certified copies of both decree and judgment are not furnished within a reasonable time after application for the same and the production of the necessary stamps.

17. The Presiding Officer shall make a memorandum, in his own handwriting, on the decree, of the date on which he actually signs it, and on the certified copies, of the day on which they are furnished.

18. The Presiding Officer of every Court shall sit punctually at the hour appointed.

19. A copy of these Rules, together with a translation thereof in Bengali or Urdu, shall be affixed or hung up in some conspicuous part of every Revenue Court, and shall be kept so affixed or hung up at all times during the sitting of the Court.

20. No excuse will be admitted for any wilful or negligent disobedience of the above rules. District Officers are to report to the Commissioner of the Division every case in which a violation of the same shall come under their notice.

VI. Section xv, Act VI. of 1862, B. C., contains directions for recording the *judgment* in a case. There is no provision in the Rent Laws analogous to that contained in Section 185 Act VIII of 1859 for the *translation* of the judgment, and it is not, therefore, incumbent upon officers deciding Rent Suits to *translate* their judgments. In preparing the *decree*, which is a separate document, the provisions of Section clxxxix, Act VIII. of 1859,* should be applied as far as they are applicable. The *decree* must be written in the language in ordinary use in the court.

VII. Article 4 of Schedule B., Act X. of 1862, requires that copies of decrees in suits of which the value of the claim is above 50 Rupees shall be taken on stamped paper. In suits under Act X. of 1859 of which the claim is below that amount, the copies of decrees will be given on plain paper, and may, of course, be filed on such paper as exhibits in other cases. For the purpose of determining whether stamp duty is chargeable on petitions or applications relating to, or copies of decrees in, suits such as those brought under Clauses 1, 5, and 6, Section xxiii., and Sections xxiv. and xxviii., Act X. of 1859, the value appended to the statement of claim, as required in Rule IV cl. 5 shall be taken to be the value of the claim. Copy of a judgment, or of an order not bring a decree, must be on 8 annas Stamp. (*See Article V of Schedule B, Act X. of* 1852.)

VIII. The date on which a party applies for a copy of a decree, (which, in suits for amounts above 50 Rupees, will be the date on which he gives in the stamped paper on which the copy is to be written), is to be noted on the copy when given. The Collector should also, at the time of signing the copy, note, with his own hand, the date of signature. If the party or his agent be present, the copy is to be immediately delivered or tendered to the one or the other in open Court, and the fact of such delivery or tender is to be noted on the copy. Should the party or his agent not appear when duly called upon in open Court to take the copy, the fact of his absence is to be noted on it, and it is to be filed with the record of the case. Should the party subsequently apply for the copy, the application may be on plain paper. It will be filed with the case, and the date of delivery will be noted on the copy of the decree.

Section clvi.

* ACT VIII. OF 1859. *Section* 189. The decree shall bear date the day on which the judgment was passed. It shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the Register of the suit, and shall specify clearly the relief granted or other determination of the suit. It shall also state the amount of costs incurred in the suit and by what parties and in what proportions they are to be paid, and shall be signed by the Judge and sealed with the seal of the Court.

Decree.

IX. Suits under Act X. of 1859 are regular suits, and the maximum fee awardable to Agents or Mukhtárs under Act VI. of 1862, B. C., Section xiv., are those detailed in Regulation XXVII of 1814, Section xxv.*

X. 1 In the appendix will be found Forms (H.) and (I.) for the Proclamation for the Attendance of the Defendant (Section lii) and for the Summons of Witnesses (Section lvi) for which no forms are given in the schedule to Act X.

Section xlvii.

2. Processes for execution in Calcutta under Act XXII. of 1840 are to be forwarded, by post or otherwise, to the Deputy Sheriff, with a request that, after obtaining the needful endorsement of one of the Judges of the High Court, he will proceed with the execution of the process.

3. In accordance with the provisions of Section i. of that Act, every process must be accompanied by a certified translation in the English language. This translation should be worded in the original English form appended to Act X. of 1859 or to these Rules as the case may be.

4. The following is the Table of fees now in force under Act VIII. of 1852, for the execution of processes in Calcutta (*See Circular Order of the Sudder Court, No.* 21, *dated 7th October*, 1852.)

On each Summons, Subpœna, Notice, and Proclamation	Rs. 2
On each Warrant, and Writ of execution against the person or effects ...	„ 4

5. The fees for the service of the process and, if it is a summons to a witness, his travelling expenses deposited under Section cxlvi, of Act X. of 1859, must be remitted to the Deputy Sheriff with the process.

6. A person must attend at the Deputy Sheriff's Office to point out any person upon whom a process is to be served, and, if the process is a writ of execution against moveable property, the judgment creditor or his agent must, under Section lxxxvii of the Act, attend to point out the property to be seized to the Sheriff's Officer.

Section xliii.

XI. Persons in attendance on a Criminal Court on bail to answer to a criminal charge, and persons in attendance on a Revenue Court to defend a suit or claim are protected from arrest under civil process. The protection will last only so long as the party is in actual attendance on, or coming to, or returning from, the Court.

Section xxix.

XII. Under-tenures in estates under the immediate management of a Collector, whether they be the property of Government or of individuals, including wards of Court, are saleable for arrears of rent under Section xxv., Regulation VII. of 1799 (*See Appendix A.*) A previous decree is not necessary to a sale under that Section. An appeal against such a sale may be heard and determined by the Commissioner, only if preferred on the ground of irrelevancy of the law.

Section cv.

XIII. Act VIII. of 1835 (*See Appendix C.*) is applicable to sales made under Section cv., Act X. of 1859, and the following is the course of procedure to be observed :—

---

* REGULATION XXVII. OF 1814. *Section XXV. First* In all regular suits . . . . . the vakeels employed by the respective parties are to be allowed, for pleading the causes of their clients, the rates of fees calculated as follows —

In suits for money, effects, or for other personal property, or for land or other immoveable property of any description, if the amount or value of the claim estimated according to the provisions of *the law quoted in Rule IV Cl 5 above* shall not exceed 5,000 *sicca* rupees, five per cent

If the amount or value shall exceed 5,000 rupees, and shall not exceed 20,000 *sicca* rupees ; on 5,000 as above, and on the remainder two per cent

If the amount or value shall exceed 20,000 rupees, and shall not exceed 50,000 *sicca* rupees ; on 20,000 as above, and on the remainder one per cent.

If the amount or value shall exceed 50,000 *sicca* rupees, and shall not exceed 80,000 *sicca* rupees , on 50,000 as above, and on the remainder eight annas per cent

If the amount or value shall exceed 80,000 rupees, the fee to the vakeel shall be 1,000 rupees, and shall in no instance exceed that sum, however great may be the value or amount of the suit in which such vakeel may be employed"

Second In all the preceding calculations, where the amount or value may be in fractions of rupees, such fractions are to be rejected in calculating the fees thereupon.

Third The rules heretofore in force providing for a deduction of five per cent. from the amount of the fees payable to vakeels having been rescinded by Regulation I 1814, it is hereby declared that the vakeels are to receive the full amoun of their fees without any deduction whatsoever.

1. All sales shall be made in public Court by the Collector or Deputy Collector of Land Revenue, or the Assistant duly empowered as prescribed by Section clxv. of Act X. of 1859, after notice given in the manner prescribed by Act VIII. of 1835, Section 2. No attachment and no separate or local advertisement of sale is necessary.

2. Each lot shall be sold to the highest bidder, and every one, not the actual defaulter, shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of a defaulter whose tenure may be exposed to sale.

3. Fifteen per cent. of the purchase money shall be paid immediately the lot is knocked down, and the Officer conducting the sale, shall be competent to refuse to accept a bid or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced in two hours.

4. If the fifteen per cent. be not paid in cash, or in Government Currency Notes within two hours of the sale, or an equivalent amount of Government Securities be not lodged, the lot shall be resold on the same day, and if the remainder of the purchase money be not paid by noon of the eighth day, notice shall be given of re-sale on the following day, that is, on the ninth day from the first sale, by proclaiming the same by beat of drum through the bazaar of the chief station of the District, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit to the Government the advance of 15 per cent. already made, and be answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one, such deficiency to be levied by the process for the execution of the decrees of the Civil Court.

Section cx.

XIV. Saleable under-tenures against which execution is applied for under Section cx. (not for their own arrears,) will be sold under Sections ccxlviii, *et seq.*, (especially ccliii.—cclx.) of Act VIII. of 1859. (*See Appendix B.*) Where it is necessary to sell Estates, or separate shares of Estates, in execution, they will be sold under the provisions of Act XI. of 1859.

XV. Commissioners will see that the proceedings of the Lower Courts are in all respects regular, whenever cases under the Act come under review either in appeal or incidentally; and in their annual circuits this should be a point for special enquiry.

XVI. Every Collector is to exercise the like supervision over his Deputies, and to report to the Commissioner annually on or before the 31st March, that he has personally satisfied himself that each Deputy Collector subordinate to him has faithfully complied with the requirements of the law in the hearing and decision of these suits, and especially in the taking of evidence.

Section cxix.

XVII. Applications for aid under Section cxix., Act X. of 1859, should be made by the distrainor himself; and an agent should be required to show his power of attorney, before being recognized in that capacity.

XVIII. To support a distrainor legally, a Collector is to depute a single peon. This officer, as the representative of the constituted authorities, will give sanction by his presence, to all legal proceedings on the part of a distrainor, and it will be his duty to discountenance, and to report at once to the Collector, any illegality that may come to his notice. He is not empowered to use physical force, or to do any thing which the distrainor himself is not entitled to do. Under no circumstances is a Collector justified in sending to the assistance of a distrainor a number of peons, whose only use can be to intimidate the ryots by an illegal display of physical force, and who become mere instruments of oppression in the distrainor's hands and naturally obey his orders, whether they be legal or not.

XIX. The Collector is not on any account to depute an officer to assist in the execution of a decree, as if it were a distraint; a decree can be enforced only by regular process of law. A Collector though not bound, when applied to for assistance under Section cxix., to enquire judicially into the legality of the distraint, should refuse assistance when the purpose for which it is sought is patently illegal.

XX. The provisions of Section cxxxii., Act X. of 1859, which relate primarily to the sale of distrained property, are by Section xcix. of the Act, made applicable to sales of moveable property in execution of decree. Section cx. again extends Section xcix. to cases of sale of houses or other buildings. The deduction of one anna in the Rupee therefore, on account of the costs of the sale, and the credit of this amount to Government, which is prescribed by Section cxxxii. should be carried out in cases of sale of houses and buildings, as well as of moveable property, in execution of decree. This will of course not apply to sales of estates and under-tenures.

Section cxxxii.

XXI. The Názir, or, in Courts where there is no officer bearing that title, the officer who performs the duties of Názir, is ordinarily to be employed to hold sales in execution of decrees of moveable property under Section xcix. and of houses or other buildings under Section cx. The employment of the Civil Court Ameens to hold such sales is not absolutely prohibited, but they should be so employed as rarely as possible, and only in exceptionally important cases.

Sections xcix. and cx.

XXII. Where the Názir is employed to sell property in execution of a decree, he should be allowed a sum sufficient to cover actual travelling and other expenses incurred; and, in special cases, the Collector may, with the sanction of the Commissioner, allow him such further remuneration as may seem proper. These charges will be disbursed by Collectors, upon the usual audit, as a contingent charge, the one anna in the Rupee, leviable under Section cxxxii. of the Act on account of the costs of sale, being credited to the head of account "X., Law and Justice." No charge, besides the one anna in the Rupee, on account of costs, can, in any case, be imposed on the parties.

XXIII. Civil Court Ameens have no claim for extra remuneration for the performance of any duties that may be required of them in cases under Act X. of 1859, but they will be allowed the travelling expenses which they have *bonâ fide* incurred, when deputed on such duties, and these expenses will be disbursed by the Collectors, upon the usual audit, as a contingent charge. Fees for the services of Ameens, *when employed on local enquiries*, will be levied under the Civil Court Rules and credited to the head of account "X., Law and Justice."

Section cxxii.

XXIV. The following is an adapted abstract of such of the existing Rules of the High Court for the employment of Civil Court Ameens in local investigations, and the levy of fees for their remuneration, as are applicable to their employment by the Revenue Courts. (See also Act VIII. of 1859, Section clxxx. *Appendix B.*)

Section lxxxi.

1. The instructions given to an Ameen for a local enquiry should be careful and precise. Such enquiries frequently prove fruitless, owing to the loose and imperfect instructions originally given to the Ameen.

2. Before orders are issued for an enquiry by an Ameen, the exact nature of the enquiry to be held, the means to which the Ameen is to have recourse in making it, and the time it should occupy, must be carefully considered and recorded.

3. It will not often be possible for the Revenue Courts to specify the date on which the Civil Court Ameen will commence his proceedings. It will therefore be ordinarily the Ameen's duty to notify the date. The Ameen must not defer his proceedings on account of the absence of a party to whom notice has been given.

4. Litigants habitually attempt to impeach the genuineness of an Ameen's returns and plans, by withholding the attestation of their own signature. An erroneous impression prevails that to sign is to ratify and accept. But it should be understood that the simple attestation of a plan does not preclude a party from objecting thereafter, to the mode in which it has been prepared.

5. The employment of Ameens is regulated by Act XII. of 1856. Especial attention is directed to Section viii. of the Act. The daily rate chargeable for the employment of an Ameen is fixed at three Rupees.

6. The whole charge for the number of days that it is estimated that the enquiry will occupy, must be levied before the order for the enquiry is issued. As soon as he has completed the enquiry, the Ameen will specially report the number of days that it has occupied, and if the amount paid into Court be found to exceed the amount to be credited to Government for the number of days, the excess must be at once refunded to the depositor.

7. In addition to the fixed daily rate of three Rupees which is to be credited to Government, the party at whose instance or for whose benefit an Ameen is deputed, must pay into Court the following charges :—

(a). The Ameen's travelling expenses, which are to be calculated with reference to the distance to be travelled, and the means by which the journey can be performed.

(b.) The remuneration of peons where it is necessary that such officers should accompany the Ameen.

(c.) The cost of the postage of the Ameen's Reports, &c.

These items are, however, to be charged only where absolutely necessary. From the amount deposited on account of these several items, the actual sums expended on these accounts by the Ameen, will be reimbursed to him and added to the costs of suit, the balance being returned to the depositor.

8. The Ameen is to be supplied with stationery from the Court by orders of which he is employed. The Civil Courts keep these officers supplied with needful instruments for survey, &c.

Section lxxiii.

XXV. The employment of Civil Court Ameens in local enquiries under Section lxxiii., Act X. of 1859, should be very sparingly resorted to. Such enquiries cannot often be necessary for the decision of suits under Act X. of 1859 at all; and when an enquiry is necessary, it by no means follows that a Civil Court Ameen should be employed upon it. Where an Officer subordinate to the Collector is employed upon such an enquiry, only his actual travelling and other expenses, with such remuneration as may seem reasonable, not exceeding 3 Rupees a day, should be charged to the parties.

Section cxxxvi.

XXVI. Appendix II. contains the periodical reports and statements, which the Board, under the authority vested in them by Section cxxxvi. of Act X. of 1859, direct that the Civil Court Ameens or other officers authorized to sell distrained property shall submit to the Collectors. They will be submitted every quarter.

Section x, Act VI of 1862.

XXVII. 1. By Section X. Act VI. of 1862, B. C., a Collector is required under certain circumstances, "on the *special application* of a proprietor or other person entitled to receive the rents of an "estate or tenure, to ascertain, determine, and record, the tenures and under-tenures "comprised in such estate or tenure, or any part thereof, the rate of rent payable "in respect of such lands, and the persons by whom respectively the rents are "payable."

2. In the opinion of the Board of Revenue, the law thus quoted does not authorize a Collector to *alter* the rent of a single tenant of such lands. He has only power to ascertain, determine, and record the rent, at the time of his enquiry actually payable by each tenant on the lands,—to prepare in fact a rent roll. The "proprietor or other person" as described in the quotation, must proceed according to the forms of the law to that end provided, before the rent of a single tenant can be enhanced.

3. Collectors are to be careful to act upon this view of the law until it be, by competent authority, declared to be erroneous, and not to take upon themselves under cover of the law, to resettle lands and estates, to do which the law quoted, in the opinion of the Board, gives them no power whatever.

Section xvii, Act VI of 1862.

XXVIII. It is of the utmost importance that decrees should be promptly executed, and Collectors should frequently examine the Register of the Execution of Decrees, No. 15, to ascertain that no avoidable delays are permitted in the Courts of the Deputy Collectors.

XXIX. The following are the

RULES FOR THE SERVICE OF PROCESSES OF THE REVENUE COURTS UNDER ACT V. OF 1863, B. C., SANCTIONED BY THE GOVERNMENT OF BENGAL.

Though applicable to all processes issuing from a Revenue Court, they will be of course chiefly used in processes under the Rent Laws, and are therefore inserted here.

I. *Remuneration of Peons.*

Two classes of peons.

1. The Peons are to be divided into two classes, regular and supernumerary, one-third of the peons at each Court being supernumerary. The appointment of every peon whether regular or supernumerary, is to be registered in the manner prescribed by Section iii. of the Act. Each peon will wear a badge bearing the number of his name on the register.

Remuneration of Regular peons.

2. One-third of the regular peons are to receive 6 rupees a month each, the rest are to receive 5 rupees each monthly. The peons to receive the higher salary, are to be selected from among the rest, for superior intelligence, industry, and good behaviour generally.

Remuneration of Supernumerary peons.

3. Supernumerary peons are to be paid at the rate of three annas each for every day that they are actually employed.

4. Upon a vacancy occurring in the ranks of the regular peons, it is to be filled by transfer of the most meritorious of the supernumerary peons, due regard being had to seniority.

II. *Employment of Peons.*

5. No SUPERNUMERARY PEON IS TO BE EMPLOYED, ON ANY ACCOUNT, IF A REGULAR PEON IS AVAILABLE.

With this proviso, the peons are to be employed in regular turn, *i. e*, upon a process offering, the peon who has been longest in waiting is to be employed on its service, unless, *for some special reason to be recorded on each occasion* by the officer at the head of the Court, it be considered expedient to employ a particular peon out of his turn.

6. Every effort is to be made to serve as many processes as possible by each peon, so as, in every way possible, to economize the labor of the peons The Názir is to be held personally responsible that this is done, and any neglect of that officer in this respect is to be severely punished.

7. Any peon, regular or supernumerary, who does not, when on duty, travel at least 12 miles in the day, is to be called strictly to account, and if he is found guilty of indolence, to be at once dismissed.

8. No peon is to wait anywhere for the attendance of the party or his agent; but if, upon reaching the place where the process is to be served or executed, he finds the party or his agent not present, he is, after obtaining, if possible, a certificate to that effect from any two respectable inhabitants of the place, immediately to return.

III. *Levy of fees.*

9. The following fees are to be levied for the service of each process, besides charges for boat-hire, ferries, postage, &c., which are to be paid separately, as provided in (Section IV.) below.

1st. If the distance of the place of service or execution from the Court whence the process is issued, calculated, not as the crow flies, but by the road the peon must travel, does not exceed 10 miles .. 8 annas.
If the said distance exceeds 10 miles but is less than 25 miles ... 1 Rupee.
And if the said distance exceeds 25 miles ... ... 2 Rupees.

2nd. As many processes as possible are to be entrusted to one peon. For every additional process after the first, *issued at the instance of the* SAME *party, and carried by* ONE *peon, over* ONE *road*, the fee is to be one-fourth of the rates above specified.

In such cases, the whole fees levied for all the processes so carried for one party are to be charged, for the purpose of fixing costs, in equal shares, upon all the processes so carried.

3rd If a peon is detained at the place of service for more than one day, at the request of the person at whose instance the process was issued or of his agent, such person or agent must pay, then and there, demurrage at the rate of 5 annas a day. Unless this demurrage is prepaid, the peon must not wait.

4th. All sums levied under the preceding rules are to be credited to the Government, to form the fund prescribed in Section ix of the Act.

IV. *Additional charges.*

5th. In addition to these fees, the actual charge which must be incurred if it is necessary to employ boats or cross ferries, is to be levied from and paid by the person at whose instance the process is issued, before issue of the process to the peon who carries the process. If a peon carries more than one process, whether for one or for several parties, the sums leviable by this Rule are to be charged, for the purpose of fixing costs, in equal shares upon all the processes carried.

6th. Whenever it may seem desirable to do so, the Court issuing a process may direct that it shall be transmitted by post either to any other Court in the same District for service or execution by one of the peons attached to that Court, or to the address of any peon already in the interior of the District for execution by him. The postage shall in such cases be prepaid by the person at whose instance the process is issued, and charged as costs upon the process.

V. *Table of Distances.*

7th. A Table, in the form given below, signed by the presiding officer, shewing the fees and charges leviable for the service or execution of a single process at every principal place in its jurisdiction and the amount chargeable for ferries or boats for the journey there, is to be suspended in each Court. This Table is to be approved by the Commissioner of the Division and must not be altered without his sanction.

AUTHORIZED CHARGES FOR THE SERVICE OR EXECUTION OF THE PROCESSES OF THIS COURT.

Name of Place.	Distance from Court.	Fee chargeable for the service of single process.	Charge for ferries and boat hire.	Total.
1	2	3	4	5

Court of

A B.,
Collector or Deputy Collector.

XXX. The proceedings provided by Section cxlv. Act X. of 1859 in case of Resistance of Distraint can only be adopted *upon complaint being made within fifteen days of the date of the resistance.* District officers are to be careful to take no steps in such cases upon the report of the officer deputed to support a distrainor under Section cxix Act X. of 1859, or unless complaint is made according to law.

APPENDIX A.

FORM II.

FORM OF PROCLAMATION FOR THE ATTENDANCE OF THE DEFENDANT *See Section lii.*

No. *(of suit)* dated

In the Court of

A B, Plaintiff *(Name, description, and address of Plaintiff)*

C. D, Defendant *(Name, description, and address of Defendant)*

WHEREAS the said A B has brought a claim against you in this Court for *(here specify particulars of claim as given in the statement)* and WHEREAS a warrant was duly issued for your arrest and WHEREAS it appears from the return of *(the Nazir or the Deputy Sheriff of Calcutta)* that, after diligent search, you were not to be found, and that the said warrant could not, therefore, be executed upon you according to the exigence thereof, PROCLAMATION is therefore hereby made that the Court will upon the day of *(Here enter a date sufficiently distant to make it certain that it will be at least ten days from the date of the publication of the notice at the residence of a defendant)* proceed to hear the said suit, and, in case of your non-attendance, will pass judgment upon the documents and proofs that may be exhibited by the plaintiff, *exparte*.

Dated this day of 186 .

FORM I.

FORM OF SUMMONS TO WITNESS. *See Section lxvi.*

No *(of suit)* dated

In the Court of

A B, Plaintiff *(Name, description, and address of Plaintiff)*

C D, Defendant *(Name, description, and address of Defendant)*

WHEREAS your attendance is required to give evidence on behalf of the Plaintiff *(or defendant)* in the above suit, you are hereby required personally to appear before this Court on the day of 186 for that purpose

Dated this day of 186

RETURNS, AS SANCTIONED BY THE BOARD OF REVENUE, REQUIRED FROM CIVIL COURT AMLENS, &C., UNDER SETION CXXXVI.

K—1.

Quarterly Statement of Business in the Office of the for the Quarter of 1864-65.

Description of cases.	Remaining from last quarter	Instituted during the quarter	Total	Number compromised or with drawn or struck off in default of the parties	Number terminated in sale	Number in which security was given to Collector	Total	Remaining	REMARKS.
Applications for sale of distrained property	5	5	10	2	1	1	4	6	

K—2

Diary in the Office of the for the Month of

No.	3rd January, 1865

K—3.

Cash Account in the Office of the for the Month of

Receipts.	Disbursements.

GENERAL APPENDIX.

APPENDIX (A).—(*Vide Section xxix. Act X. of* 1859.)

THE SPECIAL LAW FOR THE RECOVERY OF ARREARS OF REVENUE FROM FARMERS OF GOVERNMENT AND WARDS' ESTATES, &c., AND OF ARREARS OF RENT IN ESTATES MANAGED DIRECTLY BY THE COLLECTOR.

REGULATION VII, OF 1799. *Section XXIII. Second.* In the event of any arrear of revenue, ... being undischarged on the first day of the month succeeding that for which the arrear may be due, the collector, if the revenue be payable into his treasury, or if not, the tehsildar or other public officer to whom the same may be payable, ... if the arrear be due from a farmer, shall proceed without delay . . . to . . arrest his person (as well as the person of his surety, if he have given security), in the mode prescribed by Sections V. and VI. of Regulation XIV. 1793. . . . . Instead, however, of carrying the defaulter forthwith to the gaol of the Dewanny Adawlut, as directed in Section V. of Regulation XIV. 1793, the collector, if the defaulter show any disposition to adjust and satisfy the demand upon him, is at liberty to keep him in the custody of peons during a period not exceeding ten days from the date of his arrival at the collector's station; at the expiration of which period, if the arrear be not paid or satisfaction given for the immediate payment thereof, so as to induce the collector to release the defaulter, he is to be brought before the Judge of the Dewanny Adawlut, and confined in the gaol of that court as directed in the section above-mentioned. This qualification of the rule contained in that section is to be considered applicable to all cases under the original rule, or to which it may be extended by the present or any other Regulation; but it is not meant to restrict the collectors from observing the original rule in any instances where the defaulter may show no disposition to adjust and satisfy the demand upon him; or where, for any other reason, it may appear to them objectionable to suspend the confinement of the defaulter or his surety.

. . . . . .

Third. . . . The . . farmers are forbidden to demand or receive, and the ryots and other under-tenants are forbidden to pay, any part of the rents receivable by the former and payable by the latter, before the stipulated or usual period of payment, according to the kistbundy or other engagement, or established local usage; and no person hereafter making anticipated payments against this prohibition, or producing receipts for such, whether collusive or otherwise, shall be entitled to credit for the amount from the officers of Government who may attach the lands or farm, or from the landholder or farmer making the attachment, if it be made for arrears due from an under-tenant under the provisions contained in this Regulation.

. . . . . .

Sixth. If any arrear remain due from a farmer of land at the close of the current year, any land or property belonging to the defaulter, or his surety, is to be brought to public sale* as soon as possible after the close of the year, according to the rules prescribed for such sales, and, as provided in Section XXIII. of Regulation XIV. 1793, it will be at the option of the Governor-General in Council either to cancel the lease of the defaulter from the commencement of the ensuing year, or to compel the defaulter or his surety to perform the conditions of the lease until the term of it shall expire. If the Governor-General in Council shall annul the lease, the defaulter, after making good the arrear due from him to Government, is to be at liberty to prosecute the dependent taloukdars, under-farmers, or ryots, included in his farm, for any arrears of rent due to him on account of the period during which his lease remained in force, as provided in the latter part of the section above-mentioned, the preceding part of which is superseded by the rules now enacted. The provisions contained in Section XXIV. of Regulation XIV. 1793, respecting the attachment of the landed property of sureties for farmers of land, . . . are moreover still to be considered in full force (under the alterations made by this Regulation with respect to the attachment and sale), when the persons for whom they are bound may be confined, or their lands and farms attached under this Regulation; and the above rule is hereby extended to landed property of defaulting farmers which can be attached, and which in such case is to be brought under attachment at the same time that their farms are attached under the present Regulation, subject to the same provisions for withdrawing the attachment on payment of the arrear.

See Cl. 2, Sec. ii. Reg. XI. 1822.

Seventh. The discretion given to the collectors by Section VIII. of Regulation XIV. 1793, to suspend the exercise of the powers vested in them by that Regulation, in cases of drought, inundation, or other calamity of season, or cause of failure not originating in the neglect, mismanagement, or misconduct of the defaulter, is to be considered equally applicable to similar cases under the present Regulation; and the collector, in such cases, is to suspend the exercise of the powers now vested in him: but, as before required, he is immediately to report the circumstances to the Board of Revenue, with his reasons for not proceeding against the defaulter as directed, and is to be guided by their instructions. The Board of Revenue may suspend enforcement of the current kists, as well as of the interest due thereupon, in such cases; but are not to grant any ultimate remission of the amount demandable on the

See Sec. xviii, Act XI. 1859.

* Sales under this Clause and under Sec. xxv. are to be made by collectors or their assistants.—See Act VIII. 1835.

permanent assessment without the sanction of the Governor General in Council, as already directed in Section lxiii. of Regulation II. 1793.

XXIV. The provisions contained in Sections xv. xvi. xvii. xviii. xix. xx. and xxi. of Regulation XIV. 1793, for cases of disobedience or resistance to the processes against defaulting proprietors or farmers and their sureties, authorized by that Regulation, are declared equally applicable to cases of disobedience or resistance to the processes authorized by the preceding sections of this Regulation. . . . . .

XXV. When lands . . . . . become subject to a khas collection on the part of Government under any Regulation authorizing the same, or by any means come under the immediate management of the officers of Government, so that the rents are collected by them from the ryots, jotedars, dependent talookdars, under-farmers, or other descriptions of under-tenants, the collector . . . . . is authorized . . . . to proceed against defaulting under-renters, of whatever denomination, from whom arrears of rent may be due, and their sureties, in the same manner as he is authorized by Section XXIII. of this Regulation to proceed against sudder farmers paying revenue immediately to Government, and their sureties, if he shall consider this mode of procedure more likely to be effectual in causing payment of the arrear due from them : and in such cases he is authorized to issue the process directed in Section V. of Regulation XIV. 1793, on the report of the tehseeldar, or other officer employed to make the collections, as in cases of arrears due from proprietors or sudder farmers whose revenue may be made payable to a tehseeldar ; or the tehseeldar, or other collecting officer, may, in particular cases, where he may have reason to apprehend the elopement of the defaulter or his surety, himself arrest and convey him to the collector, under the provisions contained in the second clause of Section XXIII. of this Regulation. In all such cases, however, the collector, before he delivers over the parties to the Dewanny Adawlut, is to satisfy himself that the arrear stated by the tehseeldar or other mofussil officer is justly due ; and he is at liberty to keep the alleged defaulter under mofussil peons during the inquiry that may be necessary for this purpose, although the period should exceed the ten days limited by the above section : but all such inquiries are to be brought to a conclusion with the least possible delay.

See Section x. Act I. 1845.

XXVI. The provisions in the preceding section are meant to include the estates of disqualified landholders under the management of serberakars appointed by the Court of Wards, under Section viii. of Regulation X. 1793.

APPENDIX B.

THE PORTIONS OF THE CODE OF CIVIL PROCEDURE (*Act VIII. of* 1859) DECLARED APPLICABLE TO SUITS UNDER ACTS X. OF 1859, AND VI. OF 1862, B. C.

ATTACHMENTS.—(*Vide Section xvi., Act VI. of* 1862, *B. C.*)

In what cases plaintiff may apply before judgment for security from defendant to fulfill decree, and in default for an attachment of defendant's property.

ACT VIII. OF 1859. *Section* 81. If the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property or any part thereof, or to remove any such property from the jurisdiction of the Court where the suit is pending, the plaintiff may apply to the Court, either at the time of the institution of the suit or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, and, on his failing to give such security, to direct that any property, moveable or immoveable, belonging to the defendant, shall be attached until the further order of the Court.

Application how to be made.

82. The application shall contain a specification of the property required to be attached, and the estimated value of each article or item thereof; and the plaintiff shall, at the time of making the application, declare the defendant is about to dispose of or remove his property with such intent as aforesaid.

Form of warrant to be issued.

83. If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of the decree, it shall be lawful for the Court to issue a warrant to the proper Officer, commanding him to call upon the defendant, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order to produce and place at the disposal of the Court when required the said property or the value of the same or such portion thereof as may be sufficient to fulfil the decree, or to appear and show cause why he should not furnish security. The Court may also in the warrant direct the attachment until further order of the whole or any portion of the property specified in the application.

If cause be not shown or security be not furnished, property may be attached.

84. If the defendant fail to show such cause or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application, if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order. If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it shall have been attached, the Court shall order the attachment to be withdrawn.

Withdrawal of attachment.

85. The attachment shall be made according to the nature of the property to be attached, in the manner hereinafter prescribed for the attachment of property in execution of a decree for money. Any order for the attachment of property under the preceding Section shall be open to appeal by the defendant.

How the attachment is to be made

Appeal

86. In the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner hereinafter prescribed for the investigation of claims to property attached in execution of a decree for money.

Claims to property attached before judgment, how to be investigated.

87. In all cases of attachment before judgment, the Court which passed the order for the attachment, shall, at any time, remove the same, on the defendant furnishing security as above required, together with security for the costs of the attachment.

Attachment may be removed when security is furnished.

88. If it shall appear to the Court that the attachment was applied for on insufficient grounds, or if the suit of the plaintiff is dismissed or judgment is given against him by default or otherwise, and it shall appear to the Court that there was no probable ground for instituting the suit, the Court may (on the application of the defendant), award against the plaintiff in its decree such amount, not exceeding the sum of one thousand Rupees, as it may deem a reasonable compensation to the defendant for the expense or injury occasioned to him by the attachment of his property. Provided that the Court shall not award a larger amount of compensation under this Section than it is competent to such Court to decree in an action for damages. An award of compensation under this Section shall bar any suit for damages in respect of such attachment.

Compensation for attachment applied for on insufficient grounds, &c.

Proviso.

89. Attachments before judgment shall not affect the rights of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Attachment not to affect the rights of persons not parties to the suit, or bar the execution of decrees.

90. If it shall appear to the Court by whose order the property may have been attached before judgment, that there is reasonable ground for supposing that the decree, in satisfaction of which the sale of the property is applied for, was obtained by fraud or other improper means, the Court may refuse to allow the property to be sold in execution, if the decree be a decree of that Court, or, if it be a decree of another Court, may stay the proceedings for a reasonable time to enable the plaintiff in the pending suit to adopt proceedings to set aside the decree.

Court may stay the sale of property already under attachment, when execution of a decree fraudulently obtained is applied for.

. . . . . .

WITNESSES.—(*Vide Section lxvii.*)

149. The parties or their pleaders may, at any time after the issue of the summons to the defendant, if the summons be for the final disposal of the suit, or, after the issues have been recorded, if the summons to the defendant be for the settlement of issues only, obtain, on application to the Court, summonses to witnesses or other persons to attend either to give evidence or to produce documents, and in any such summons the names of any number of persons may be inserted.

Application for summons.

150. No stamp duty shall be leviable in respect of any application for the summons of a witness or other person to attend either to give evidence or to produce a document, anything contained in any Regulation or Act notwithstanding.

No stamp duty on application for summons

151. The person applying for a summons shall pay into Court such a sum of money as shall appear to the Court to be reasonable, to defray the travelling and other expenses of each witness or other person mentioned in the summons, in passing to and from the Court in which he may be required to attend, and for one day's attendance. If the Court be a subordinate Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) established by the Court to which such Court shall be immediately subordinate. The sum so paid into Court shall be tendered to the witness or other person at the time of serving the summons, if it can be served personally. If it shall appear to the Court that the sum paid into Court on account of the travelling and other expenses of the witness or other person in passing to and from the Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the witness or other person as may appear to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the goods of the person ordered to pay the same, or may discharge the witness without requiring him to give evidence. If it shall be necessary to detain the witness or other person summoned, for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned, to pay into Court such sum as may be sufficient to defray the expenses of his detention for such further period,

Expenses of witnesses to be paid before issue of summons.

Scale of expenses.

Tender of expenses to witness.

If sum be not sufficient.

Expenses if witness is detained.

and, in default of such deposit being made, may order the witness to be discharged without requiring him to give evidence.

Time, place, and purpose of attendance to be specified in summons.

152. Every summons for the attendance of a witness or other person, shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the witness or other person may be called on to produce shall be described in the summons with convenient certainty.

Summons to produce a document.

153. Any person, whether a party to a suit or not, may be summoned to produce a document, without being summoned to give evidence; and any person, summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

SERVICE OF SUMMONS ON A WITNESS.

How and when the summons shall be served.

154. Every summons to a witness or other person shall be served by exhibiting the original, and delivering or tendering a copy; and the service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the witness or other person, to allow him a reasonable time for preparation, and for travelling to the place at which his attendance is required.

Service to be on the witness, or a male member of his family.

155. Whenever it may be practicable, the service of the summons shall be upon the person thereby required to attend, but when he cannot be found, the service may be made on any adult male member of his family residing with him.

When the summons cannot be served, it is to be returned to the Court.

156. When the person required to attend cannot be found, and there is no adult male member of his family on whom the summons can be served, the serving Officer shall return the summons to the Court from whence it issued with an endorsement thereon that he has been unable to serve it.

Time and manner of service to be endorsed on the summons.

157. The serving Officer shall, in all cases in which the summons has been served, endorse on the original summons the time when and the manner in which it was served.

How a summons on a witness who resides in another jurisdiction is to be served.

158. If the person required to attend be resident within the jurisdiction of any other Court than that in which the suit is pending, the summons shall be transmitted by the Court in which the suit is pending, to any Court having jurisdiction at the place where the witness resides by which it can be most conveniently served; and the Court to which the summons is sent shall, upon receipt thereof, deliver the same to the Nazir or other proper Officer of such Court, to be served in the manner above directed; and upon the return of the summons by the serving Officer, it shall be transmitted to the Court from whence it originally issued.

When a witness absconds his property may be attached.

159. If the summons for the attendance of any person either to give evidence or to produce a document, cannot be served in either of the ways hereinbefore specified, the Court on being certified thereof by the return of the serving Officer, and upon proof that the evidence of such witness or the production of the document is material, and that the witness or other person absconds or keeps out of the way for the purpose of avoiding the service of the summons, may cause a proclamation requiring the attendance of such person to give evidence, or produce the document, at a time and place to be named therein, to be affixed in some conspicuous place upon his house or place of abode; and if such person shall not attend at the time and place named in such proclamation, the Court may, at the instance of of the party on whose application the summons was issued, make an order for the attachment of the moveable and immoveable property of such person, to such amount as the Court shall deem reasonable, not being in excess of the amount of the costs of attachment and of any fine to which the person may be liable under the provisions of the following Section.

How the Court is to proceed with the witness on his appearance.

160. If, on the attachment of the property, such witness or other person shall appear and satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment, as it shall deem fit. If such witness or ther person shall not appear, or, appearing, shall fail to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not such a notice of the proclamation as aforesaid, it shall be lawful for the Court to order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which the Court may impose upon such witness or other person under the provisions of any law for the time being in force for the punishment of a witness who may abscond or keep out of the way in order to avoid the service of a summons. If the witness or other person shall pay into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

Of the Examination of Parties as Witnesses.

A party to a suit appearing in person may be examined either in his own behalf or on behalf of any other party.

161. When a party to a suit appears in person at any hearing of the suit, he may be examined as a witness, either in his own behalf or on behalf of any other party to the suit, in the same way as if he were not a party thereto.

Special application to be made for the examination of a party as a witness.

162. If any party to a suit shall require to enforce the attendance of any other party thereto as a witness, he shall, by himself or his pleader, make a special application to the Court for an order requiring the attendance of the party, and shall show, to the satisfaction of the Court, sufficient grounds in support of such application, otherwise a summons shall not be issued.

The Court may first issue a notice to show cause.

163. The Court, if it think fit, may, before making such order, cause notice to be given to the party or his pleader, fixing a day for such party to show cause why he should not attend and give evidence; and may also, from time to time, if necessary, for good and sufficient reason, enlarge the time for such purpose.

Court shall receive a written declaration in support of the cause shown.

164. In support of the cause shown, the Court shall receive any declaration in writing of the party, on unstamped paper, if signed by him and verified in the manner hereinbefore provided for the verification of plaints, and delivered into the Court by himself or his pleader.

If not sufficient cause be shown, summons to issue.

165. If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court shall enlarge the time for that purpose, the Court shall issue its order requiring the party to attend and give evidence.

Court may of its own accord at any time summon a witness.

166. If the Court shall think it necessary for the ends of justice to examine any party to the suit or to inspect any document in his possession or power, the Court may, of its own accord in any stage of the suit, cause such party to be summoned to attend as a witness to give evidence or to produce such document if in his possession or power on a day to be appointed in the summons, and may examine such party as a witness in open Court or may cause such party to be examined in such other manner as the Court may direct.

Attendance of Witnesses, and consequence of non-attendance.

Persons summoned to give evidence must attend.

167. Any person who shall be summoned to appear and give evidence in a suit, shall be bound to attend at the time and place named in the summons for that purpose.

Consequences of non-attendance by a witness.

168. If any person, on whom any summons to give evidence or produce a document shall have been served in either of the ways specified in Section 155 shall, without lawful excuse, fail to comply with the summons, the Court may order such person to be apprehended and brought before the Court. If such person abscond or keep out of the way, so that he cannot be apprehended or brought before the Court, his property shall be liable to attachment and sale in the manner and subject to the rules provided in Sections 159 and 160 with respect to a witness or other person on whom the service of a summons cannot be effected.

Consequences of refusal to give evidence.

169. If any witness, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may commit such witness to close custody for such reasonable time as it may deem proper, unless he shall, in the meantime, consent to give his evidence, or to produce the document. If, after the expiration of such time, the witness shall persist in his refusal, the Court may proceed to deal with him according to the provisions of any law for the time being in force for the punishment of persons refusing to give evidence.

Consequence of non-attendance or refusal of a party to the suit to give evidence.

170. If any person, being a party to the suit, who shall be ordered to attend to give evidence or produce a document, shall, without lawful excuse, fail to comply with such order, or, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may either pass judgment against the party so failing or refusing or make such other order in relation to the suit as the Court may deem proper in the circumstances of the case.

Any person present in Court may be called upon to give evidence though not summoned.

171. Any person present in Court, whether a party to the suit or not, may be called upon by the Court to give evidence and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence or to produce such document, and shall be liable to be dealt with by the Court as a party or witness, as the case may be, would, under any of the preceding provisions, be liable to be dealt with for any refusal to obey the order of the Court.

WHEN AND HOW WITNESSES ARE TO BE EXAMINED.

Witnesses to be examined at the hearing of the suit in open Court

172 On the day appointed for the hearing of the suit or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court, in the presence and hearing, and under the personal direction and superintendence of the Judge. In cases in which an appeal lies to a higher tribunal, the evidence of each witness given upon such examination shall be taken down in writing, in the language in ordinary use in proceedings before the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties to the suit, or their pleaders, or such of them as are in attendance, and shall, if necessary, be corrected, and shall be signed by the Judge If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down in writing to be interpreted to him in the language in which it was given Where all the parties to the suit present, and the pleaders of such as are absent, consent to have such evidence as is given in English taken down in English, the Judge may so take it down in his own hand It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any party or his pleader shall require it If any question put to a witness be objected to by either of the parties or their pleaders, and the Court shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together with the decision of the Court upon the objection The Court shall record such remarks as it may think material respecting the demeanor of the witness while under examination In cases in which the evidence is not taken down in writing by the Judge himself, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall accompany the record In cases in which an appeal does not lie to a higher tribunal, it shall not be necessary to take down the depositions of the witnesses in writing at length, but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record If the Judge shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and in cases not appealable shall cause such memorandum to be made in writing from his dictation in open Court and shall sign the same, and such memorandum shall form part of the record

In what form evidence shall be taken in appealable cases

In what case a witness may require his deposition to be interpreted to him

When evidence may be taken in English

Objection made to questions.

Memorandum of substance of the evidence to be made by Judge as each witness is examined

In what form evidence shall be taken in cases not appealable

If Judge be unable to make a memorandum of the evidence, reason of inability to be recorded

A witness may for sufficient cause be examined immediately

173 If a witness be about to leave the jurisdiction of the Court, or other good and sufficient cause can be shown to the satisfaction of the Court why his examination should be taken immediately, it shall be competent to the Court, upon the application of either party or of the witness, at any time after the institution of the suit, to take the examination of such witness forthwith, or on any day that may be fixed for that purpose, of which due notice shall be given to the parties if the day be fixed in their absence The witness shall be examined, and his deposition shall be taken down in writing, in the manner hereinbefore prescribed, and the deposition so taken down may be read in evidence at any hearing of the suit

Witnesses to be examined upon oath or according to the law for the time being.

174 All witnesses shall be examined upon oath or affirmation or otherwise according to the provisions of the law for the time being in force in relation to the examination of witnesses

OF COMMISSIONS TO EXAMINE ABSENT WITNESSES AND MAKE LOCAL ENQUIRIES.

Cases in which Court may issue a Commission to examine witnesses

175 When the evidence of a witness is required who is resident at some place distant, more than a hundred miles from the place where the Court is held, or who is unable from sickness or infirmity to attend before the Court to be personally examined, or is a person exempted by reason of rank or sex from personal appearance in Court, the Court may, of its own motion, or on the application of any of the parties to the suit, or on the representation of the witness, order a Commission to issue for the examination of such witness on interrogatories or otherwise, and may, by the same or any subsequent order, give all such directions for taking such examinations as may appear reasonable and just If the witness be resident within the jurisdiction of the Court issuing the Commission, the Commission may be issued to any Officer of the Court, or to any subordinate Court, or to any other person or persons whom the Court issuing the Commission may think proper to appoint If the witness be resident at some place which is beyond the jurisdiction of the Court issuing the Commission and not within the *original* jurisdiction of *the High Court of Judicature*, the Commission shall ordinarily be issued to the Court within whose jurisdic-

When the witness resides within the Court's jurisdiction

When the witness resides beyond the Court's jurisdiction, and not within *the original jurisdiction of the High Court.*

tion the witness may reside, and which can most conveniently execute the same; but, under special circumstances, the Commission may be issued to any other person or persons whom the Court issuing the Commission may think proper to appoint.

When the witness is within the *original* jurisdiction of the *High* Court.

176. If the witness be resident within the original jurisdiction of the High Court, the Commission shall ordinarily be issued to the Court of Small Causes held under Act IX of 1850 *(for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay)*, but may, under special circumstances, be directed to any person or persons whom the Court issuing the Commission may think proper to appoint.

When the witness is not within the jurisdiction of the *High* Court, but within the British territories or the territories of any Native Prince or State in alliance with the British Government.

177. When the evidence of a witness is required, who is resident at some place not within the jurisdiction of the High Court *in either of its jurisdictions* but within the British territories in India or within the territories of a Native Prince or State in alliance with the British Government, the Court, if it be satisfied that the evidence of such witness is necessary may, of its own motion, or on the representation of any of the parties to the suit, issue a Commission for the examination of the witness; provided that, if the suit be pending in any Court subordinate to the principal Civil Court of a District, such subordinate Court shall not issue the Commission but the principal Civil Court of the District may issue the Commission on the application of the subordinate Court.

When the witness is beyond the said territories and not within the territories of any Native Prince or State in alliance with the British Government.

178. When the evidence of a witness is required, who is resident at some place beyond the said territories and not within the territories of a Native Prince or State in alliance with the British Government, the *High* Court, if the suit in which the evidence of the witness is required be pending in that Court and the Court be satisfied that such evidence is necessary, may, of its own motion or on the application of any of the parties to the suit, issue a Commission to examine the witness; if the suit be not pending in the *High* Court, that Court may issue the Commission on the application of the Court in which the suit is pending. In all such cases, the Commission may be issued to any person or persons whom the *High* Court may think proper to appoint.

Commission to be returned to the Court issuing it with the depositions of the witnesses.

179. After the Commission has been duly executed it shall be returned, together with the deposition of the witness who may have been examined thereunder, to the Court out of which the Commission issued, unless otherwise directed by the order for issuing the Commission; in which case it shall be returned in terms of such order, and the Commission and the return thereto and the deposition of the witness who may have been examined under such Commission shall in all cases form part of the record of the suit. But no deposition taken under a Commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, without collusion, more than a hundred miles from the place where the Court is held, or exempted by reason of rank or sex from personal appearance in Court, or unless the Court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same.

When depositions may be read in evidence.

LOCAL ENQUIRY.—(*Vide Section lxxiii. Act X. of* 1859.)

Commission for local investigation.

180. In any suit or other judicial proceeding in which the Court may deem a local investigation to be requisite or proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of any mesne profits or damages, the Court may issue a Commission to an Officer of the Court appointed to execute such Commissions, or, if there be no such Officer, to any suitable person, directing him to make such investigation and to report thereon to the Court. In all such cases, unless otherwise directed by the order of appointment, the Commissioner shall have power to examine any witnesses who may be produced to him by the parties or any of them, the parties themselves, and any other persons whom he may think proper to call upon to give evidence in the matters referred to him; and also to call for and examine documents and other papers relevant to the subject of enquiry: and persons not attending on the requisition of the Commissioner, or refusing to give their testimony or to produce any documents or other papers, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the report of the Commissioner, as they would incur for the same offences in suits tried before the Court. The Commissioner, after such local inspection as he may deem necessary and after reducing to writing, in the manner hereinbefore prescribed for taking the depositions of witnesses in the presence of the Judge, the depositions taken by him, shall return the depositions, together with his report in writing, subscribed with his name, to the Court. The report and depositions shall be taken as evidence in the suit and shall form part of the record; but it shall be competent to the Court, or to the parties to the suit or any of them, with the permission of the Court, to examine the Commissioner personally in open Court, touching any of the matters referred to him or mentioned in his report, or the manner in which he may have conducted the investigation.

The report and depositions to be taken as evidence in the suit. Commissioner may be examined in person.

A Commissioner may be appointed to investigate and adjust accounts.

181. In any suit or other judicial proceeding in which an investigation or adjustment of accounts may be necessary, it shall be lawful for the Court to appoint such Officer or other person as aforesaid to be a Commissioner for the purpose of making such investigation or adjustment, and to direct that the parties or their attorneys or pleaders shall attend upon the Commissioner during such investigation or adjustment. In all such cases, the Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary for his information and guidance and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry or also to report his own opinion on the point referred for his investigation. The proceedings of the Commissioner shall be received in evidence in the case, unless the Court may have reason to be dissatisfied with them, in which case the Court shall make such further inquiry as may be requisite, and shall pass such ultimate judgment or order as may appear to it to be right and proper in the circumstances of the case.

Expenses of Commission to be paid into Court, before issue thereof.

182. Whenever a Commission is issued either for taking evidence or for a local investigation or an investigation into accounts, the Court, before issuing the Commission, may order such sum as may be thought reasonable for the expenses of the Commission to be paid into Court by the party at whose instance or for whose benefit the Commission is issued.

SALES OF UNDER-TENURES NOT FOR THEIR OWN ARREARS.—(*Vide Section cx.*)

Sales to be by public auction.

248. Sales in execution of decrees shall be conducted by an Officer of the Court or by any other person whom the Court may appoint, and shall in all cases be made by public auction in manner hereinafter mentioned.

Notification of sales by public auction.

249. In all cases of intended sale by public auction, . . . of . . . immoveable property, in execution of a decree, a proclamation of the intended sale, specifying the time and place of sale, the property to be sold,

. . . . . .

and the amount for the recovery of which the sale is ordered, together with any other particulars that the Court may think necessary, shall be made in the current language of the District. The proclamation shall also declare that the sale extends only to the right, title, and interest of the defendant in the property specified therein. Such proclamation shall be made on the spot where the property is attached by beat of drum or in such other mode as may be customary; and a written notification to the same effect shall be affixed in the Court-house of the Judge who shall have ordered the sale, and in some conspicuous spot in the town or village in which the attachment may have taken place. When the property ordered to be sold may consist of land or of any right or interest in land, the written notification shall also be affixed in the Office of the Collector of the District in which such land is situate and in the Court-house of the principal Civil Court of the District where the Court which ordered the sale is subordinate to such Court. The sale shall not take place until after the expiration of at least thirty days in the case of immoveable property, ... calculated from the date on which the notification shall have been affixed in the Court-house of the Judge ordering the sale.

Time of sale.

. . . . . .

Deposit by purchaser in case of sale of immoveable property.

253. In all cases of sale of immoveable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

At what time full amount of purchase money to be made good.

254. The full amount of purchase money shall be made good by the purchaser before sunset of the fifteenth day from that on which the sale of the property took place, or, if the fifteenth day be a Sunday or other close holiday, then on the first office day after the fifteenth day; and in default of payment within such period, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold. If the proceeds of the sale which is eventually consummated be less than the price bid by such defaulting purchaser, the difference shall be leviable from him under the rules for enforcing the payment of money in satisfaction of a decree of Court.

Procedure on default.

Defaulting purchaser answerable for loss by resale.

Notification on re-sale of immoveable property.

255. Every re-sale of immoveable property in default of payment of the purchase money shall be made after the issue of a fresh notification in the manner and for the period prescribed for original sales.

Confirmation of sale.

256. No sale of immoveable property shall become absolute until the sale has been confirmed by the Court. At any time within thirty days from the date of the sale, application may be made to the Court to set aside the sale on the ground of any material irregularity in publishing or conducting the sale, but no sale shall be set aside on the ground of such irregularity unless the applicant shall prove to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

257. If no such application as is mentioned in the last preceding Section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale, ; and in like manner if such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale for irregularity. If the objection be allowed, the order made to set aside the sale shall be final ; if the objection be disallowed, the order confirming the sale shall be open to appeal ; and such order unless appealed from, and if appealed from, then the order passed on the appeal, shall be final ; and the party against whom the same has been given shall be precluded from bringing a suit for establishing his claim.

The sale, if not objected to for irregularity, or if the objection is disallowed, shall become absolute.

When the order to set aside a sale shall be open to appeal.

258. Whenever a sale of immoveable property is set aside, the purchaser shall be entitled to receive back his purchase money with or without interest, in such manner as it may appear proper to the Court to direct in each instance.

If the sale be set aside, price to be returned to purchaser.

259. After a sale of immoveable property shall have become absolute in manner aforesaid, the Court shall grant a certificate to the person who may have been declared the purchaser at such sale to the effect that he has purchased the right, title, and interest of the defendant in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title, and interest.

Certificate to be granted to the purchaser of land.

260. The certificate shall state the name of the person who at the time of sale is declared to be the actual purchaser, and any suit brought against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Certificate to state the name of actual purchaser.

263. If the property sold shall consist of . . . land, . . . in the occupancy of a defendant or some person on his behalf or of some person claiming under a title created by the defendant subsequently to the attachment of such property, the Court shall order delivery thereof to be made by putting the party to whom the . land, ... may have been sold, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same.

Delivery of immoveable property in the occupancy of defendants.

264. If the property sold shall consist of land . . . . . in the occupancy of ryots or other persons entitled to occupy the same, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the land . . . . . and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, that the right, title, and interest of the defendant has been transferred to the purchaser.

Delivery of immoveable property in the occupancy of ryots, &c.

APPENDIX (C.)—(*See Section cv.*)

A. D. 1835. ACT VIII.

THE LAW FOR THE SALE OF AN UNDER-TENURE FOR ITS OWN ARREARS.

PASSED *by the Honorable the Governor-General of India in Council, on the 8th June,* 1835.

I. BE it enacted, that such parts of Clause Seventh, Section xv. Regulation VII. 1799, of the Bengal Code, and other Regulations in force as vest the judge to the Dewanny Adawlut with the power of bringing to sale, in execution of summary decrees for rent, the talook or other tenure of the defaulter, and so much of Clause Third, Section xxiii. Regulation VII of 1822, of the same Code, as prohibits the collectors from selling land in satisfaction of summary awards for arrears of rent which may have accrued thereon, be rescinded, and that the power heretofore vested in the judge of the Dewanny Adawlut of selling land in satisfaction of summary decrees for rent, be transferred to the collectors of land revenue.

Power to sell lands in satisfaction of summary decrees for rent vested in collectors.

II. And be it enacted, that all sales for the recovery of arrears of rent or revenue, held under Clause Seventh, Section xv, or Clause Sixth, Section xliii., or Section xxv. Regulation vii. of 1799, shall be public, and be conducted by the collector, his deputy, or duly authorized assistant, and that ten days' notice shall be given of such sales by advertisement, to be stuck up at the cutcherry of the Zillah Court or local Adawlut, and that of the collector.

Sale for arrears of rent or revenue to be conducted by collector.

Notice.

APPENDIX (D).—(*See Section cxlix*).

TRIAL OF MUKHTÁRS, &c.

Charges against pleaders before whom to be tried.

ACT XVIII. OF 1852, *Section IV.* When any pleader is charged with fraudulent or dishonest conduct in the discharge of his professional duty, by any person or court, the court competent to make an order for his dismissal shall serve, or cause to be served, upon such pleader, a copy of the charge or charges brought against him, and also a notice of the day appointed by the said court for the hearing of such charge or charges, and such copy and notice shall be served upon the said pleader at least twenty clear days before the day appointed for such hearing: and, on the hearing of the said charge or charges, the court shall receive all such relevant evidence as shall be properly tendered by or on behalf of the court or party bringing the charge or charges, or by the said pleader, and shall proceed to adjudicate on the said charge or charges in a summary way, and shall record its decision, and the reasons on which the same is grounded. Provided always, that the court which is competent to dismiss a pleader shall also be competent to bring a charge or charges and proceed against him as aforesaid, and may also hear and adjudicate upon such charge or charges in manner hereinbefore mentioned. Provided also, that the evidence of witnesses on such hearing shall be taken and made upon oath; and every witness who shall give false evidence at such hearing shall be liable, on conviction, to punishment for perjury, in like manner as witnesses examined in a civil or criminal trial.

APPENDIX (E).—(*Vide Section clxvi.*)

THE LAW FOR THE SALE OF PATNI TALÚKS.

A. D. 1819. REGULATION VIII.

A REGULATION *to declare the Validity of certain Tenures, and to define the relative rights of Zemindars and Putnee Tulookdars, also to establish a Process for the Sale of such Talooks in Satisfaction of the Zemindar's Demand of Rent, and to explain and modify other Parts of the System established for the Collection of Rents generally throughout Bengal:* PASSED *by the Governor-General in Council, on the 3rd September,* 1819.

I. BY the rules of the perpetual settlement, proprietors of estates paying revenue to Government, that is, the individuals answerable to Government for the revenue then assessed on the different mehauls, were declared to be entitled to make any arrangements for the leasing of their lands in talook or otherwise, that they might deem most conducive to their interests. By the rules of Regulation XLIV. 1793, however, all such arrangements were subjected to two limitations: first, that the jumma, or rent, should not be fixed for a period exceeding ten years; and, secondly, that in case of a sale for Government arrears, such leases or arrangements should stand cancelled from the day of sale. The provisions of Section ii. Regulation XLIV. 1793, by which the period of all fixed engagements for rent was limited to ten years, have been rescinded by Section ii. Regulation V. 1812; and, in Regulation XVIII. of the same year, it is more distinctly declared that zemindars are at liberty to grant talooks or other leases of their lands, fixing the rent in perpetuity at their discretion, subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government revenue, in the same manner as heretofore. In practice, the grant of talooks and other leases at a rent fixed in perpetuity had been common with the zemindars of Bengal for some time before the passing of the two Regulations last mentioned; but, notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all intention or desire to have it enforced as a security to the Government revenue in the manner originally contemplated, it was omitted to declare in the rules of Regulations V. and XVIII. of 1812, or in any other Regulations, whether tenures at the time in existence, and held under covenants or engagements entered into by the parties in violation of the rule of Section ii. Regulation XLIV. 1793, should, if called in question, be deemed invalid and void as heretofore. This point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity, or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements, and declaring null and void any granted in contravention thereto, was in force. Furthermore, in the exercise of the privilege thus conceded to zemindars under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rajah of Burdwan, but has since been extended to other zemindaries; the character of which tenure is, that it is a talook created by the zemindar, to be held at a rent fixed in perpetuity, by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent and for his conduct generally, or he is excused from this obligation at the zemindar's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zemindar. By the terms also of the engagements interchanged, it is amongst other stipulations provided, that in case of an arrear occurring, the tenure may be brought to sale by the zemindar, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand. These tenures have usually been denominated

putnee talooks, and it has been a common practice of the holders of them to underlet, on precisely similar terms, to other persons, who on taking such leases went by the name of durputnee talookdars; these again sometimes similarly underlet to seputneedars; and the conditions of all the title-deeds vary in nothing material, from the original engagements executed by the first holder. In these engagements, however, it is not stipulated whether the sale thus reserved to himself by the grantor is for his own benefit, or for that of the tenant; that is, whether, in case the proceeds of sale should exceed the zemindar's demand of rent, the tenant would be entitled to such excess; neither is the manner of sale specified, nor do the usages of the country nor the Regulations of Government afford any distinct rules, by the application of which to the specific cases, the defects above alluded to could be supplied, or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner. The tenures in question have extended through several zillahs of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the Courts of Civil Judicature in regard to them have been productive of such confusion as to demand the interference of the legislature: it has accordingly been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a putnee talook as above described, also to declare the legality of the practice of underletting in the manner in which it has been exercised by putneedars and others, establishing at the same time such provisions as have appeared calculated to protect the underlessee from any collusion of his immediate superior with the zemindar or other, for his ruin, as well as to secure the just rights of the zemindar on the sale of any tenure under the stipulations of the original engagements entered into with him.—It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale, and the form and manner of conducting such sale; and whereas the estates of zemindars under engagements with Government are liable to be brought to sale at any time for an arrear in the revenue payable by monthly kists to Government, it has seemed just to allow any zemindar who may have granted tenures with a stipulation of the right to sell for arrears, the opportunity of availing himself of this means of realizing his dues in the middle of the year, as well as at the close, instead of only at the end of the Bengal year, as heretofore allowed by the Regulations in force; it has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though, in conformity with the Regulations heretofore in force, the stipulation for sale contained in the engagements interchanged may have restricted such sale to the case of a demand of rent remaining unpaid at the close of the Bengal year. It has been likewise deemed advisable to explain and modify some of the existing rules for the collection of rents with a view to render them more efficacious than at present, as well as to provide against sundry means of evasion now resorted to by defaulters. The following rules have accordingly been enacted by His Excellency the Most Noble the Governor-General in Council, to take effect from the date of their promulgation throughout the several districts of the province of Bengal, including Midnapore.

Leases fixing rent in perpetuity, or for a longer term than ten years, declared valid, though executed while Sec. ii. Reg. XLIV. 1793, was in force.

II. It is hereby declared that any leases or engagements for the fixing of rent now in existence, that may have been granted or concluded for a term of years, or in perpetuity, by a proprietor under engagements with Government, or other person competent to grant the same, shall be deemed good and valid tenures, according to the terms of the covenants or engagements interchanged, notwithstanding that the same may have been executed before the passing of Regulation V. 1812, and while the rule of Section ii. Regulation XLIV. 1793, which limited the period for which it was lawful to grant such engagements to ten years, and declared all that might be entered into for a longer term to be null and void, was in full force and effect; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question: provided, however, that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to Government, from the liability to be cancelled on sale of the said estates for arrears of the said revenue, under the rule of Section v. Regulation XLIV.* 1793, unless specially exempted from such liability by the rule in question, or by any other specific rule of the Regulations in force.

Putnee tenures declared valid, transferable, and answerable for debt.

III. *First.* The tenures known by the name of putnee talooks, as described in the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared that they are capable of being transferred by sale, gift, or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the Courts of Judicature, in the same manner as other real property.

Putneedar's right of underletting declared.

Second. Putnee talookdars are hereby declared to possess the right of letting out the lands composing their talooks in any manner they may deem most conducive to their interest, and any engagements so entered into by such talookdars with others, shall be legal and binding between the parties to the same, their heirs and assignees: provided, however, that no such engagements shall operate to the prejudice of the right of the zemindar to hold the superior tenure answerable for any arrear of his rent, in the state in which he granted it, and free of all incumbrance resulting from the act of his tenant.

* See Secs xxxvii. and lii. Act XI of 1859.

Third. In case of an arrear occurring upon any tenure of the description alluded to in the first clause of this section, it shall not be liable to be cancelled for the same under the rule contained in the seventh clause of Section xv, Regulation VII. 1799, for leases conveying a limited interest in the land; but the tenure shall be brought to sale by public auction, and the holder of the tenure will be entitled to any excess in the proceeds of such sale, beyond the amount of the arrear of rent due, subject, however, to the provisions contained in Section xvii. of this Regulation.

Putnee tenures declared not voidable for arrears.

IV. If the holder of a putnee talook shall have underlet in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceding section to attach to putnee talooks, in so far as concerns the grantor of such under-tenure. The same construction shall also hold in the case of putnee talooks of the third or fourth degree.

Inferior tenures held under similar title-deeds will be deemed to confer a similar interest to that provided for putnee talooks in Section iii.

V. The right of alienation having been declared to vest in the holder of a putnee talook, it shall not be competent to the zemindar or other superior to refuse to register, and otherwise to give effect to such alienations, by discharging the party transferring his interest from personal responsibility, and accepting the engagements of the transferee. In conformity, however, with established usage, the zemindar or other superior shall be entitled to exact a fee upon every such alienation; and the rate of the said fee is hereby fixed at two per cent. on the jumma or annual rent of the interest transferred, until the same shall amount to one hundred rupees, which sum shall be the maximum of any fee to be exacted on this account. The zemindar shall also be entitled to demand substantial security from the transferee or purchaser, to the amount of half the jumma or yearly rent payable to him from the tenure transferred; the condition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure. The above rules shall apply equally to the case of a sale made in execution of a decree or judgment of Court, as to all other alienations, but it shall not apply to the case of sale for an arrear in the rent due to the zemindar or other superior, under the rules hereinafter contained. The purchaser at such a sale shall be entitled to have his name registered, and to obtain possession without fee, though, of course, liable to be called on to give security under the conditions of the tenure purchased.

Zemindar not entitled to refuse to give effect to a transfer

But may demand his fee.

Fee fixed at 2 per cent. on the jumma.

But the maximun one hundred rupees.

May also demand security.

As far as half the jumma.

Above rules to apply to sales in execution and all alienations.

But no fee on sale for arrears.

VI. It shall be competent to the zemindar or other superior to refuse the registry of any transfer until the fee above stipulated be paid, and until substantial security to the amount specified, be tendered and accepted: provided, however, that if the security tendered by any purchaser or transferee should not be approved by the zemindar, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the zemindar to accept it, and give effect to the transfer without delay. It is hereby provided, that the rules of this and of the preceding section shall not be held to apply to transfers of any fractional portion of a putnee talook, nor to any alienation other than of the entire interest: for no apportionment of the zemindar's reserved rent can be allowed to stand good, unless made under his special sanction.

Zemindar may refuse sanction to transfer till fee and security be tendered.

Sufficiency of security, if contested, to be determined by appeal to Civil Court.

VII. In case of the sale of a putnee tenure in execution of a judgment of Court, if the purchaser do not, within the period of one month from the sale, conform to the rules of Section v. of this Regulation, in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the zemindar or other superior shall be entitled, of his own authority, to send a suzawul to attach and hold possession of the tenure, until the forms prescribed be observed. In case, also, of the sale of a putnee tenure for arrears of the rent due upon it, under the rules of this Regulation, if security be required by the zemindar, and the purchaser fail to furnish the same within one month of the date of sale, the zemindar shall similarly be entitled to send a suzawul to attach and hold possession of the interest which may have passed on the sale, to the exclusion of the purchaser, until the prescribed security be given. Attachments made under this section shall be regarded as trusts for the benefit and at the risk of the purchaser; consequently, after deducting the rent due and the expense of attaching, any surplus that may by yielded by the collections, shall be held in deposit for such purchaser; but if the collections for the time fall short of the rent, the tenure and person of the proprietor shall be liable in the same manner as if no attachment had been made, and the accounts produced by the zemindar or other superior making the attachment, shall be received as primâ facie evidence to warrant process for an arrear so accruing.

Upon public sale, if security be not tendered within one month, zemindar may attach.

Attachment to have the effect of a trust.

VIII. *First.* Zemindars, that is, proprietors under direct engagements with the Government, shall be entitled to apply, in the manner following, for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure. The

Zemindars to be allowed periodical sales of tenures, in which right to sell for arrears is reserved by stipulation.

exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.

First sale to be applied for on the first of Bysakh.
Notice to be published that it will take place on the first of Jyte.
Notice to be sent into the mofussil.
Rules for serving it.

Second. On the first day of Bysakh, that is, at the commencement of the following year from that of which the rent is due, the zemindar shall present a petition . . . . . to the Collector, containing a specification of any balances that may be due to him on account of the expired year, from all or any talookdars, or other holders of an interest of the nature described in the preceding clause of this section. The same shall then be stuck up in some conspicuous part of the kutcheree, with a notice that if the amount claimed be not paid before the first of Jyte following, the tenures of the defaulters will on that day be sold by public sale in liquidation. Should, however, the first of Jyte fall on a Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead; a similar notice shall be stuck up at the sudder kutcheree of the zemindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be BY HIM sent, to be similarly published at the kutcheree, or at the principal town or village upon the land of the defaulter. The zemindar shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the mofussil, shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same, or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. If it shall appear from the tenor of the receipt, or attestation in question, that the notice has been published at any time previous to the fifteenth of the month of Bysakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed. In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the kutcheree of the nearest moonsiff, or, if there should be no moonsiff, to the nearest thannah, and there make voluntary oath of the same having been duly published; certificate to which effect shall be signed and sealed by the said officers, and delivered to the peon.

Mid-year sale to be applied for on the first of Kartick.
Notice as above for sale the first of Aughun.
If arrear be not less than one-fourth of demand.

Third. On the first day of Kartick, in the middle of the year, the zemindar shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Aughun, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartick, to less than one-fourth, or a four-anna proportion of the total demand of the zemindar, according to the kistbundee, calculated from the commencement of the year to the last day of Kartick.

Collector to conduct the sale.
Rules for bidding, &c.
Fifteen per cent. to be paid on sale.
Or lot to be resold after two hours.
Failing remainder, resale on ninth day after.

IX. All sales of saleable tenures applied for under the rules of this Regulation, shall be made in public kutcheree by the *Collector, or his Deputy or Assistant of the district* within which the lands may be situated; the land shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter; fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours. If the fifteen per cent. be not paid in cash, or in *Government Currency* Notes within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be resold on the same day, and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bazar of the sudder station of the zillah, after which the lot shall be resold, at the appointed time, at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made . . . . . and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

Forms to be observed on selling.
Zemindar to certify balance,
And service of notice in mofussil.
On his own responsibility.

X. At the time of the sale, the notice previously stuck up in the kutcheree shall be taken down and the lots be called up successively in the order in which they may be found in that notice. A person shall attend on the part of the zemindar, with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the mofussil; nor shall any lot be put up to sale, until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate roobukaree to be held upon each lot sold. If the sale be of the description provided for in the third clause of Section viii. of this Regulation, the kistbundee of the defaulter shall

likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained. The zemindar shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.

Tenure to be sold free of incumbrance by act of defaulter.

XI. *First.* It is hereby declared that any talook or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said talook may have been held. No transfer by sale, gift, or otherwise; no mortgage or other limited assignment; shall be permitted to bar the indefeasible right of the zemindar to hold the tenure of his creation answerable, in the state in which he created it, for the rent, which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such zemindar.

No under-lease to stand after sale.

Second. In like manner, on sale of a talook for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred; the possessors of such interests must consequently lose the right to hold possession of the land, and to collect the rents of the ryots; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

Exception in favour of bonâ fide engagements with ryots.

Third. Provided nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a talook or other saleable tenure intermediate between the zemindar and actual cultivators, to eject a khodkasht ryot, or resident and hereditary cultivator, nor to cancel bonâ fide engagements made with such tenants, by the late incumbent or his representative, except it be proved in a regular suit, to be brought by such purchaser, for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.

Above rule to take effect retrospectively.

XII. The rules of the preceding section, being declaratory of the principle to be observed on all occasions wherein saleable tenures are made responsible for the zemindar's reserved rent, will equally apply to the case of talooks heretofore sold, as to those that may be sold henceforward, if the sale shall have been fair, and the process observed in conducting it shall have been that recognized and in use in the district at the time of selling. Nothing, however, herein contained shall operate to the prejudice of any agreement, express or implied, now subsisting between the purchaser of a talook and the lessees of his predecessor.

Proviso.

But not to apply to private transfers.

Neither shall the rule for the fall of under-tenures be considered to apply to any private transfer by a talookdar of his own interest, nor to a public sale in execution of a decree, nor to the case of a relinquishment by the talookdar in favour of the zemindar, nor to any act originating with the former holder, other than default as aforesaid: all such operations involve only a transfer of the tenure in the state in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is of course subject to any restriction put upon the tenure by his act.

Reason for allowing under-tenants a means of staying sale.

XIII. *First.* With reference to the injury that may be brought upon the holder of a talook of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the rent due from himself to the zemindar, after having realized his own dues from the inferior tenantry, it is deemed necessary to allow such talookdars the means of saving their tenures from the ruin that must attend such a sale; and the following rules have, accordingly, been enacted of this purpose.

Manner of doing so.

By lodging the advertised balance.

Second. Whenever the tenure of a talookdar of the first degree may be advertised for sale in the manner required by the second and third clauses of Section viii. of this Regulation, for arrears of rent due to the zemindar, the talookdars of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into court the amount of balance that may be declared due by the person attending on the part of the zemindar on the day appointed for sale; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and should the amount lodged be sufficient, the sale shall not proceed, but, after making good to the zemindar the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.

In case of rent due being lodged.

Credit to be given.

Third. If the amount so lodged shall be rent due by the inferior talookdar to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent

that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.

Fourth. If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the talook so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto. If the defaulter shall desire to recover his tenure from the hands of the person or persons, who by making the advance may have required such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve per cent. per annum, up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realized from the usufruct of the tenure.

In case of advance from private funds.

To have the effect of mortgage.

Defaulter how to recover possession.

XIV. *First.* Should the balance claimed by a zemindar, on account of the rent of any under-tenure, remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve, in the manner provided for in Sections ix. and x. of this Regulation; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged. It shall, however, be competent to any party desirous of contesting the right of the zemindar to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the zemindar for the reversal of the same, and, upon establishing a sufficient plea, to obtain a decree with full costs and damages. The purchaser shall be made a party in such suits, and, upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the zemindar or person at whose suit the sale may have been made.

Sale not to be stayed except the arrear claimed be lodged.

But action to lie for its reversal.

Second. In cases also in which a talookdar may contest the zemindar's demand of any arrear, as specified in the notice advertised, such talookdar shall be competent to apply for a summary investigation at any time within the period of notice; the zemindar shall then be called upon to furnish his kubooleut and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale. Such award, if so made, will of course regulate the ulterior process, but if the case be still pending, the lot should be called up in its turn, notwithstanding the suit; and, if the zemindar or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash, or in Government securities or notes, by the talookdar contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy, but by a regular action for damages and for a reversal of the sale.

Summary investigation may be applied for by defaulter.

But not to stay sale without deposit.

XV. *First.* So soon as the entire amount of the purchase-money shall have been paid in by the purchaser at any sale made under this Regulation, such purchaser shall receive from the officers conducting the sale a certificate of such payment. The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the kutcheree of the zemindar, and, upon furnishing security, if required, to the extent of half the jumma or annual rent, he shall receive the usual umuldustuk, or order for possession, together with the notice to the ryots and others to attend and pay their rents henceforward to him. The zemindar shall also be bound to furnish access to any papers connected with the tenure purchased, that may be forthcoming in his kutcheree, and should he in any manner delay the transfer in his office, or refuse to give the order for possession, notwithstanding that good and substantial security shall have been furnished, or tendered, on requisition, the new purchaser shall be entitled to apply direct to the court, and he shall receive the orders for possession, and shall be put in possession of the lands by means of the nazir, in the same manner as possession is obtained under a decree of court; provided, however, that if the delay be on account of the zemindar's contesting the sufficiency of the security tendered, the rule contained in Section vi. of this Regulation shall be observed.

Rules for purchasers obtaining possession.

Zemindar to give transfer on security being furnished, if required.

Remedy in case of delay.

Proviso.

Second. When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections

In case of opposition.

Proclamation to issue from Court

of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the *Collector* for the aid of the public officers in obtaining possession of his just rights A proclamation shall then issue under the seal of the Court and signature of the *Collector* declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the zemindar, acquired the entire rights and privileges attaching to the tenure of the late talookdar, in the state in which it was originally derived by him from the zemindar, he alone will be recognized as entitled to make the zemindaree collections in the mofussil, and no payments made to any other individual will on any account be credited to the ryots, or others, in any suit, for rent, brought under the provisions of *Section xxiii cl 4 Act X of* 1859, or in any application to stay process by distraint, under the rules of *the same Act*, or on any other occasion whatever, when the same may be pleaded

In case of further opposition

Third Should the late incumbent, or his late under-tenants, continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police-officers, and of all other public officers who may be at hand, and capable of affording assistance, shall be given to the new purchaser, on his presenting a written application for the same, and, in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights

Police and all public officers to aid

Under tenures how to be brought to sale for arrear

XVI Under-tenures held under engagements similar to those executed between the zemindar and putneedar, having been declared not to be voidable for an arrear of the rent fixed upon them in perpetuity, it will be necessary that the person to whom the said rent may be payable, should (in case he be desirous of holding the tenure answerable in the manner provided for by stipulation in the deeds interchanged) proceed according to the rules of *Act VIII of* 1835 and the General Regulations, to have the sale effected at the end of the year in the same manner as heretofore. But it is hereby provided, that every such sale shall be public, and be conducted by the *Collector or his Deputy or Assistant*, under the rules of this Regulation, as far as the same may be applicable, ten days' notice shall be given of such sales, by advertisement, to be stuck up at the kutcherries of the court and collector

Rules for disposing of the purchase money of sales for arrears under this Regulation

XVII *First* The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation

One per cent to be carried to the account of Government

Second One per cent shall first be deducted from the net proceeds realized, and shall be carried to the account of Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain, for carrying into effect the provisions of this Regulation

Zemindar's balance and expenses to be next made good

Third The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the talook to sale) to the zemindar or other person to whom the same may be due provided, however, that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied Such antecedent balances, if the zemindar shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become in fact mere personal debts of the individual talookdar, and must be recovered in the same way as other debts by a regular suit in the court.

But not antecedent balances

Remainder to be sent to the collector's treasury

Fourth Any excess that may remain after satisfying the demand of the zemindar, in the manner above described, shall be forthwith sent by the officer conducting the sale, to the treasury of the collector, or assistant collector, of the district, to be there held in deposit to answer the claims of the talookdars of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest in the land composing the talook sold, or on any part of it

To answer claims of under tenants

Under tenants free to prosecute for the price of their interest or compensation

Fifth It shall be competent to any one conceiving himself to possess such an interest, to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale If the court shall, on investigation, consider the plaintiff's claim to be an equitable one, the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances If there be more claimants than one, payment shall not be made from the deposit, until the whole of the claims be settled, and, in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees

Payment how to be made from deposit, if many claims

Sixth. Provided, however, that no taloukdar of the second degree, or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior talook, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

Action not to be if the under-tenant be himself in arrear at the time of sale.

Seventh. Should no claims upon the purchase-money of a talook, sold as above, be brought forward by any under-tenants or assignees, within the period of two months from the date of the sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the *Collector* for the amount so held in deposit, or for the excess therof, as the case may be, and he shall receive a certificate under the seal of the *Collector*, of there being no claims to afford ground of detention for the whole or any part of the deposit; and upon exhibiting such certificate to the collector the amount set free th reby shall be paid to his receipt. In the same manner, upon executing a decree passed in favor of any under-tenants or assignees, they shall receive certificates under the seal of the *Collector*, declaring the amount adjudged to them out of the deposit; and upon exhibiting the certificates, the amount shall be paid severally to their receipts by the collector.

In case of no claim in two months, or only partial claims, defaulter to receive the excess unclaimed.

Eighth. It shall be competent to any party interested in a deposit, to withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day, as shown by the Government Gazette last received.

Any party interested may substitute Government securities for cash in deposit.

INDEX.

The Rulings of the High Court and the Board's Rules are Indexed in Italics.

R. O.—Right of Occupancy; F. R.=Right to hold at Fixed Rates.

	Page.
Abatement.	
Right of Ryot with R. O. to, XVIII. ...	8
Suit for, XXIII. 3.	11
Decree for arrears to be given notwithstanding suit. 93.	..
Only the amount claimed can be decreed. 99.	12
Patnidar can sue. 95A.	11
Ryot with R. O. can sue. 96. ..	..
Tenant holding under a lease can sue. 97.	...
Decreed for deficiency of land, kabulyat notwithstanding. 98.	12
Date of cause of action in a suit for, 101.	.
—Of suit *does not follow upon death of party necessarily.* 200.	18
Absence (*See* Non-Attendance)	
Accounts.	
Suit for, XXIV.	18
Limitation of ditto, XXXIII. ...	22
Execution of decree for, LXXXIV. ...	32
Action in Civil Court. (*See* Civil Court).	
Adjournment.—To give plaintiff time to apply for second warrant. LII. ...	25
—Before fixing of issues. In *exparte cases,* for attendance of defendant. LVI.	26
In all cases for recorded reasons. LIX....	27
For attendance of principal when agent's personal knowledge is defective. LXIV.	...
—After fixing of issues. For recorded reasons. LXV.	...
—Collector's general powers of. LXXII.	29
The exercise of them is optional. 261. ...	...
But should be reasonable. 260.	...
Board's Rules as to, V. 10-14.	56
—Of sale of Distrained property. CXXX.	40
Agent—for management of land. Suit against, XXIV.	18
Does not lie against other agents; 205. .	...
Nor against a Shareholder : 206. ...	...
Nor against a self-constituted agent 208A.	19
Lies against the heir of an agent; 207. .	...
And against a Dewan; 205A. ..	18
And against a relative acting as Agent. 208.	19
Limitation of suit against, XXXIII. ...	22
Agent.—for management of Land.—*(Continued.)*	
Limitation of suit against, in case of fraud. XXXIII	22
Fraud must be by Agent personally. 242 A....	23
This special limitation not applicable to sureties. 242.	...
Suspension of Agent determines the agency. 241	22
Right of suit revives if Agent puts in accounts at any time. 242 B. ...	23
(*See* Limitation.)	
Execution of decree against, LXXXIV.	32
Ditto against surety. LXXXV. ...	...
May institute or defend suits; LXIX....	28
Without power of attorney. 259. ...	...
But if he does so, is to be treated as principal. LXIX.	...
Cannot distrain without power of attorney. CXIV.	37
Is personally liable for illegal act done under color of distraint. *ib.* ...	...
Notice of deposit of rent maybe served upon, V.	50
May apply for issue of Notice of Enhancement. XIII.	4
And sign the notice. 28A.	...
May receive Notice of Relinquishment. XIX.	8
May represent claimant of property attached in execution of decree. C. ...	34
Proceedings once ratified cannot be questioned. 156.	45
Can obtain no title under Section 77, by receiving rent. 280	31
—Authorized, with personal knowledge.—May present Statement of Claim. XXXV.	23
May represent the defendant. XLIII. . .	24
To be examined and cross-examined like principal. LIX.	27
Petition to correct his deposition to be received with great caution. 253. ..	...
Procedure, if Collector consider his personal knowledge defective. LXIV. ..	...
Suit cannot, on this ground, be dismissed at hearing. 254.	...

	Page.
AGENT.—(*Continued.*)	
AUTHORIZED, OR MUKHTAR.—May be employed to conduct a case. LXXI.	29
Powers of a Collector over, CXLIX.	43
Fees may be allowed as costs. XIV.	52
The law as to these fees. IX.	57
AMEEN. (*See* DISTRAINT *and* LOCAL ENQUIRY.)	
AMENDMENT of Statement of Claim. XLII.	24
APPEALS.—From ORDER of Deputy Collector to COLLECTOR. CLI.	44
Must be made within 15 days. CLII.	...
Proper stamp. IV. 4.	55
—From JUDGMENT of Deputy Collector to COLLECTOR. CLV.	44
To be on 8 anna stamp, and to be presented within 15 days. CLVI.	45
From ORDER of Collector to COMMISSIONER. CLI.	44
Must be made within 30 days. CLII.	...
Proper stamp. IV. 4	55
—In Resistance of Process cases lies to the Executive. CXLVII.	43
—To the JUDGE, or HIGH COURT. CLX.*	45
Procedure in such appeals. CLIX.	46
—PROCEDURE OF COLLECTOR in trial of, CLVII.	45
Dismissal for default. *ib.*	.
Decree *ex-parte. ib.*	...
Re-admission of, CLVIII.	..
Judgment in, CLIX.	..
Lies to JUDGE; *in suits for Ejectment*, 162.	15
In Resumption cases, 223.	20
And from certain judgments passed by Collector: CLIII.	44
Not excluding some orders in execution of decree. 301	...
From order rejecting petition for rehearing, in appealable cases. XIII.	52
Lies to COMMISSIONER; *in applications, for aid to eject*; 214.	19
in Registry cases. 219	20
SPECIAL, *the law as to.* 305-11.	46
NO APPEAL—from a judgment *ex-parte* or by default. LVIII.	26
Nor from an order setting aside a judgment so passed. XIII.	52
Not even if the order be passed by a Deputy Collector. 251.	26
Nor from an order passed in appeal by the executive. CLII.	44
But the Board or the Commissioner may call for such cases. *ib.*	...
Nor from Collector's order upon a CLAIM to moveable property taken in execution; CLII.	35
Or to an under-tenure sold for its own arrears, CVII.	35
Or to immoveable property taken in execution, CXI.	37
Or in measurement cases. X.	51
In the preceding four cases there is an appeal to the Civil Court. (*See the Section applicable to each case*)	...
APPLICATION FOR Issue of Notice of enhancement. XIII.	4
Aid to eject. XXV.	19
Registry of subordinate tenure. XXVII.	20
Issue of Warrant of Arrest. XLIX.	25
APPLICATION FOR—(*Continued.*)	
Issue of second Warrant or Proclamation. LII.	...
Rehearing in *ex-parte* and default cases. LVIII.	26
Rehearing in cases in which Collector's judgment is final. CLIV.	44
Summons of a witness. LXVI.	28
Execution of decree, oral and written. XVII.	53
Do. against moveable property. LXXXVII.	33
Second and successive do. LXXXIX.	...
Sale of under-tenure for its own arrears. CV.	35
Execution against immoveable property. CIX.	36
Aid in distraint. CXIX.	38
Sale of distrained property. CXXII.	39
Leave to deposit rent. V.	50
Aid when measurement is opposed. IX.	51
Measurement by Collector. X.	...
Record of tenures &c, by do. *ib.*	...
Revision of order as to occupancy., &c. *ib.*	...
ARREAR OF RENT—Defined. XX.	9
Ejectment of Ryot for, XXI.	...
Cancelment of lease of temporary leaseholder for, XXII.	...
Suit for, XXIII. 4.	12
Must be instituted within 3 years of close of year, XXXII.	22
If for an enhanced rent, within 3 months of ditto. *ib.*	...
Defendant who has given kabúlyat cannot question landlord's title. 118.	13
Presumption from decree for subsequent years. 102.	12
And from payment for ditto. 103.	...
Payment may be applied to earlier years. 104.	...
And should be so applied. 104A.	...
Law as to SETS-OFF. 105-109.	...
As to possession of tenant. 110-111.	...
Res judicata. 112-114.	13
Purchaser at sale in execution, date of his title. 115.	...
Supremacy of ditto. 117.	...
Title of Judgment-Debtor if decree has not been executed. 116.	...
Law as to REAL *and* OSTENSIBLE *proprietors or lessees.* 119-121.	...
Payment to zemindar, after lease to farmer without notice. 122.	...
Law as to HOUSE RENT. 123-125.	...
Proof of relation of landlord and tenant necessary. 126-127.	...
But mere denial of tenant does not raise this issue. 128.	13
Onus upon tenant pleading payment. 128A.	...
Suit against farmer and surety. 129.	...
Sazáwal, short collections of. 130.	...
Onus upon landlord to prove sazáwal's accounts. 130A.	...
Liability of heirs. 131 131A.	...
Assignee of zemindar may sue. 132.	14
Law as to Golahs, Markets, and Tolls. 133-135.	...
Auction purchaser acknowledges no title by receiving rent. 136.	...

Page.

ARREAR OF RENT.—(*Continued.*)

Waiver of claim to interest. 137-138. ... 14
Presumption from long acceptance of less rents. 139A. ... ...
Waiver of place of payment. 139. ... ...
Specimens of arrangements among SHAREHOLDERS *not containing relation of landlord and tenant.* 140-142. ... ...
Shareholder must pay rent for land which he occupies personally. 141A. ... ...
Right of Shareholder to sue for his share of rent. 143-145. ... ...
Payment by tenant to one of the shareholders. 145A. ... ...
Suit does not lie for balance of decree under Regulation VII. of. 1799, 146... 15
Guardian of infant cannot sue without letters of administration. 147. ... ...
Agent's admission of rent due is not proof. 148. ... ...
Issue when claim to hold RENT-FREE *is set up.* 154. ... ...
The right to assessment must first be established. 154A. .. ..
And the lands legally assessed. 154B. ... ...
Instance of CONTEMPT. 155. ... ...
A jote cannot be sub-divided without zemindar's consent. 157. ... ...
Title to hold at fixed rents, judicially established, cannot be questioned on authority of a decree for arrears. 158. ...
Suit lies against Government for rent of land taken without authority for Embankments. 159. 15
Mortgagee may bind himself as a tenant. 160. ... ...
Liability of tenant holding without an agreement, retrospectively. 160A. ... ...
—Imprisonment under decree for, without process. LXXXIV. 32
—Recovery by DISTRAINT (*See* DISTRAINT.)
—Recovery by Putni sale. CLXVI. ... 46
ARREST.—OF DEFENDANT BEFORE HEARING, procedure upon, L. 25
Compensation for unreasonable, LIII. ... 26
—OF JUDGMENT DEBTOR; without process. LXXXIV. 32
Do. In execution of decree. XCIII. ... 33
—For resistance of process. CXLVII. ... 43
Procedure after ditto. XVIII. ... 53
ASSESSMENT OF RENT-FREE LAND (*See* RENT-FREE LAND).
Procedure. XXVIII. 20
ASSIGNEE *of Zemindar may sue for arrears.* 132. 14
ASSISTANT to Collector, powers of. CLXV.... 46
ATTACHMENT.—Of moveable property in execution. XCIX. 34
—Of house or buildings. CX. 36
—Provisions of Code of Civil Procedure apply to, XVI. 52
ATTENDANCE—OF TENANTS cannot be compelled by Zemindar. XI. 3
Suit for breach of this law. XXIII. 2 ... 11
—OF WITNESSES. (*See* WITNESSES).
AUCTION PURCHASER—*Can he eject Ryot holding at F. R.?* 2 & 3.... ... 1

Page.

AUCTION PURCHASER—(*Continued.*)

Cannot eject dependent talukdars who so hold. 39. 5
May receive rent without acknowledging title. 136. 14
Cannot eject Ryot with R. O. except by legal process. 218. 19
—OF A GOVERNMENT ESTATE. (*See* GOVERNMENT ESTATE).
AUTHORIZED AGENT. *See* AGENT.
BENAMI PROPRIETORS AND LESSEES, *law as to.* 119-121. 13
BOARD OF REVENUE.—To sanction statements required from distraining officer. CXXXVI. 41
To exercise general control over Collectors and Deputy Collectors. CLI. ... 44
May call for and revise orders passed by Commissioner or Collector in appeal. CLII. ... ...
To decide the venue of suits when lands lie in two districts, if there is any dispute. XX. 53
BOARD OF REVENUE'S RULES CONCERNING,
Time of hearing suits. I. 54
Delegation of powers. II. ... ...
Security bonds. III. 55
STAMPS *in suits relating to Revenue paying lands.* IV. 1. ... ...
Ditto Ditto Revenue-free lands. 2.... ...
On applications. 3. ... .
On appeals. 4. ... ...
On copies. VII. 57
Statement of value of suit. IV. 5. ... 55
Record of evidence. V. 1-9.... ... 56
Adjournment. ib. 10-14. ... ...
Delivery of judgment. ib. 14-15. ... 57
Delivery of copies of judgment and decree. ib. 16-17. ... ...
Ditto. VIII. ... ...
Preparation of judgment and decree. VI.... ...
Fees to Mukhtárs. IX. 57
Forms of process not supplied by Act. X. X. 1. 58
Execution of process in Calcutta. X. 2. &c. ... .
Protection of Defendant in attendance on Court. XI. ... ...
Recovery of arrears from Estates managed directly by Collector. XII. ... ...
Sale of under-tenures for their own arrears. XIII: 95
Do. not for their own arrears. XIV. ... ...
Commissioner's duty of supervision. XV. ...
Collector's Do. Do. XVI. ... ...
Aid to Distrainors. XVII. &c. ... ...
Costs of Sale. XX. 60
Employment of Nazir in Sales. XXI. .. ...
Remuneration to Nazir so employed. XXII. ... ...
Do. to Civil Court Ameen. XXIII. ... ...
Local Enquiries. XXIV. .. ..
Employment of Civil Court Ameens in Do. XXV. 61
Returns required from Civil Court Ameens XXVI. . ...
Measurement of private lands on special application. XXVII. ... ...

	Page.
BOARD OF REVENUE'S RULES.—*(Continued.)*	
Execution of Decree. XXVIII. ...	61
Employment of Peons and Service of Process. XXIX.	62
Resistance of Distraint. XXX. ...	63
BODY. Execution against the, (*See* WARRANT)	
BURDEN OF PROOF. (*See* ONUS PROBANDI)	
CALCUTTA, *Execution of process in,* X. 2. &c.	58
CANAL RENT, *not recoverable under Act* X. 1334.	14
CANCELMENT *of lease.* (*See* EJECTMENT)	
CIVIL COURT. Action lies to, in the following cases	...
FOR DAMAGES—for irregularity in sale of moveable property. CIV.	35
TO SETTLE DISPUTE as to right to rent. LXXVII	29
Do. do. as to right to distrain. CXL. ..	12
TO CONTEST COLLECTOR'S ORDER upon a claim to moveable property taken in execution. CIII.	35
Do. do. to under-tenure sold for its own arrears. CVII.	36
Do. do. to immoveable property taken in execution. CXI.	37
Do. passed in the case of lands under his direct management, under Section XXV.	
Regulation VII. of 1799. XXIX. ...	21
Do. in measurement cases. X. ...	51
—Judgment Debtor under decree of, may continue to collect rent till ousted, 116.	13
CIVIL COURT AMEENS. (*See* DISTRAINT *and* LOCAL ENQUIRY)	
To be very rarely employed. { XX. & ...	60
{ XXV ...	61
Rules as to their employment. { XXIII. &	60
{ XXIV.	61
CIVIL JAIL, (*See* IMPRISONMENT). defined. CLXVIII.	46
CIVIL PROCEDURE, Rules of *(chiefly Act VIII. of* 1859*)* applicable to the following processes under these Acts:— ...	
Attachment. XVI.	52
As to Witnesses. LXVII.	28
Local Enquiries. LXXIII.	29
Executions of Decrees for more than 500 Rs. XCII.	33
Sale of lands in execution not for their own arrears. CX.	36
Resistance of Process. CXLVII. ...	43
Appeals to Judge and High Court. CLXI.	46
How far applicable. 194-195.	18
CLAIMANT. (*See* INTERVENOR.)	
COLLECTOR—to receive Notice of Relinquishment and serve it. XIX. ...	8
Only can try certain suits. XXIII. XXIV.	10 to 18
To aid to eject in certain cases. XXV. ...	19
To enquire into and give effect to transfers of tenures. XXVII.	20
To try suits for dispossession of holders of certain rent-free lands. XXVIII. ...	...
How to recover rents of lands under his management, XXIX.	21
Board's Rule on this subject. XII. ..	58
May extend time for producing plaintiff's documents. XXXVIII. ...	23
Do. Do. defendant's documents. LXII. ...	27

	Page.
COLLECTOR—(*Continued.*)	
May return imperfect Statement of Claim. XLII.	24
When to issue summons. XLIII. .	...
And warrant. XLIX.	25
Must issue summons of another Collector. XLVII.	24
But may not issue his warrant. XLIX. ...	25
Procedure when defendant is brought before him upon a warrant. LI. ...	...
May issue a second warrant or proclamation. LII.	...
May award compensation for unreasonable application for arrest. LIII. ..	26
May strike off case if neither party appear at hearing, or adjourn. LIV.	...
In absence of plaintiff, may pass judgment by default, or upon admission or dismiss the case. LV.	...
In absence of defendant may decree ex-parte or adjourn. LVI.	...
May require conditions from defendant before he hears a case so adjourned. LVII.	26
May re-hear a case decided ex-parte or by default. LVIII.	...
Must record reasons for adjourning day of hearing. LIX.	27
At hearing, to examine the parties upon oath, recording the substance in his own language. LX.	...
May then, if possible, give his decree. LXIII.	...
Or may summon principal if agent's knowledge is defective. LXIV. ...	...
When to record issues. LXV.	...
May summon witnesses. LXVI.	28
May strike off case for non-attendance of parties. LXVIII.	...
May summon parties personally, though represented by authorized agent or mukhtar. LXXI.	29
General powers of Adjournment. LXXII.	...
May order or make local enquiry. LXXIII.	...
May fix the term of pottah of ryot with a right of occupancy. LXXVI. ...	...
Must make intervenor party to suit. LXXVII.	...
How to pronounce and record judgment. XV.	52
May grant pottah if landlord refuse. LXXX.	32
His decree for a kabúlyat to be considered a kabulyat. LXXXI.	...
May commit judgment-debtor to jail without process. LXXXII.	...
May issue warrant of execution. LXXXVIII.	33
And second and successive do. LXXXIX.	..
How to commit judgment-debtor to Jail by warrant. XCIII.	33
May declare a decree for 100 Rupees or under, satisfied by one imprisonment. XCIV.	34
May stay sale of moveable property to hear claim. C.	...
Do. do. of under-tenure for its own arrears. CVI.	35

Page.

COLLECTOR.—*(Continued.)*
Do. do. of houses or buildings. CXI. ... 37
May aid distraint. CXIX. ... 38
To issue notice and proclamation for sale of distrained property. CXXIV. ... 39
To stay such sale upon institution of suit. CXXV. ... ...
To release distrained property upon security after institution of suit. CXXVII. ... ...
May award damages for groundless distraint, in the suit. CXXXVIII. ... 41
Or upon a suit after distraint. CXLI. ... 42
Procedure upon Resistance of Distraint. CXLV. 43
Further rules; may take security from arrested defendant. XVIII. ... 53
How to issue Processes. CXLVI. ... 43
Procedure upon Resistance of Process. CXLVII. ... .
How and where to hold his Court; CXLVIII. ... ...
And when. 1. 54
Powers over Agents and Mukhtárs. CXLIX. 43
Is subject to general control of Commissioner and Board. CLI. ... 44
To exercise general control over Deputy Collectors. *ib.* ... ...
To try appeals from *orders* of Deputy Collector. *ib.* ... ...
If presented within 15 days. CLII. ... ...
And from some *judgments* of ditto. CLIV. 45
If presented within 15 days besides time for getting copy. CLVI. 45
His judgment final in certain cases. CLIII. 44
In these he may review upon new evidence. CLIV. ... ...
Procedure in case of appeals from Deputy's *judgment.* CLVII. ... 45
Re-admission of appeal dismissed for default. CLVIII. ... ...
Judgment in appeal. CLIX. ... ...
Jurisdiction of, XX. 53
Not to extend beyond his own district; CLXIII. 46
Unless, under certain circumstances, Board direct. XX. 53
To receive and dispose of deposits of rent. V. 50
To measure lands on landlord's application. X. 51
To frame schedule of assessment on his special do. *ib.* ... ...
May alter the record upon application. *ib.* ...
May award fees to Mukhtars. XIV. ... 52
May withdraw suit from any Deputy Collector. XX. 53
May decide doubtful jurisdiction of Deputy Collector. *ib.* ... ...
Erroneous proceeding rectified by High Court. 234A. 21
May delegate powers to Deputy Collector left in charge. II. 54
To supervise Deputy Collector's proceedings. XVI. 59
COMMISSIONER of Revenue—to exercise general control over Collectors and Deputy Collectors. CLI. 44

Page.

COMMISSIONER.—*(Continued.)*
What appeals he is to hear. CLI. ... 44
Appeal from Collector lies to, in resistance of process cases. CXLVII. ... 43
May call for and revise orders passed by a Collector in appeal. CLII. ... 44
To supervise proceedings of local officers. XV. 59
COMPENSATION—(*See* DAMAGES) to Defendant for application for warrant of arrest without reasonable cause. LIII. .. 26
For extortion of rent by illegal measures. XII. 4
From claimant to moveable property to judgment creditor. CII. 35
To Defendant for causeless suit for rent. III. 49
CONCURRENT JURISDICTION—*powers of Court of,* 203.... 18
CONTEMPT—*Instance of fine for,* 155. .. 15
COSTS of service of summons or warrant. XLVIII. 24
Do. of process in Calcutta. X. 4. ... 58
Conditions as to, before hearing a case adjourned for defendant's attendance. LVII. 26
Do. before rehearing an exparte or default case. LVIII. ... ...
—To be paid by judgment-debtor; LXXXIV. 32
Including diet money for support in prison. XCVII. 34
—Of notice upon defaulter to be deposited with application for sale of distrained property. CXXIII. 39
—Of distraint and sale. CXXXII. ... 40
If no sale take place. CXXXV. ... 41
—Of *Process* and of *Witnesses* to be deposited. CXLVI. 43
—Provision as to, when defendant pays into Court after previous tender. VII.... 50
Do. without previous tender. VIII. .. ...
Mukhtar's fees to be allowed as costs. XIV. 52
COUNTERPART. (*See* KABULYAT.)
COURT—Where, and how to be held; CXLVIII. 43
And when. 1. 54
To be held punctually. V. 18. ... 57
CUSTOM. *Rule of law as to proof of,* 199. .. 18
DAMAGES—For exaction of excess Rent or withholding receipts. X. 3
Not necessarily awardable; there must be enquiry. 24. ... ...
—For extortion of rent by illegal process. XII. 4
—SUIT FOR. XXIII. 2. 11
—Against judgment creditor for sale of moveable property. CIII. 35
—For illegal act under color of distraint. CXIV. 37
—For vexatious distraint, awardable in suit. CXXXVIII. 41
—For distraint of property not belonging to debtor. CXXXIX. 42
—For distraint for rent not due or due from another person, *after realization.* CXLI. ... ...
—For illegal distraint or for injury to distrained property. CXLII. ... ...

	Page.
DAMAGES.—(*Continued.*)	
For distraint by unauthorized person. CXLIII.	42
For resistance to distraint by third party. CXLV.	43
For unreasonable neglect to pay rent. II. *Leading case.* 315.	49
For unreasonable suit for rent. III. ...	...
DEATH *of party does not abate suit, of necessity.* 200. ...	18
DECISION—*What documents to contain.* 309.	45
DECREE.—(*See also* JUDGMENT *and* EXECUTION.)—When it may first be given. LXXIII.	27
For ejectment, conditional. LXXVIII. ...	31
Time for obtaining copy. CLVI. ...	45
Effect to be given to it without waiting appeal. 319.	53
Not to specify mode of execution. 320. ...	...
Is a separate document from the Judgment. VI.	57
How to be prepared. ib.	...
Rules as to copy of. V., 16, &c. *and* VIII.	...
DEFAULT.	
Judgment by, at hearing. LV. .	26
If plaintiff, when sent for, does not come. LXIV.	27
Dismissal of appeal for, CLVII. ...	45
DEFAULTER.—(*See* DISTRAINT)—how to obtain withdrawal of distraint. CXXI. ...	39
DEFENDANT—may be required to produce document. XXXIX. .	23
Need not, but may, be *personally* summoned. XLIII.	24
Protected from arrest by Civil process during attendance. XI.	58
May bring his own witness without process. XLIV. LXI.	24 27
How to be summoned. XLV. ...	24
And arrested upon warrant. XLIX. ...	25
Procedure towards, after arrest. L. LI. .	.
Second warrant against, or proclamation. LII. ...	. .
—JUDGMENT AGAINST by admission. LV. ...	26
Ditto ex-parte, or adjournment for attendance. LVI.	.
Condition before case so adjourned is heard. LVII.	...
Rehearing of a case decided ex-parte. LVIII.	...
Examination, cross examination, and written defence. LIX. ...	27
Production of documents. LXII. . .	...
May be summoned in person, if the personal knowledge of his representative is insufficient. LXIV. .	
And suffer judgment ex-parte if he does not attend. *ib.*	...
Generally, may be summoned personally, LXXI.	29
May summons witnesses by process. LXVI.	28
Issues may be tried in his absence. LXVIII.	...
Attendance of certain females not to be required. LXX.	28
Arrest of, upon decree, without process, LXXXIV.	32
Damages against, for causeless withholding judgment. II.	49

	Page
DEFENDANT.—(*Continued.*)	
By tender of rent, before suit, can escape costs. VII. . .	50
Do. during suit. do. subsequent costs. VIII. (*See* JUDGMENT DEBTOR).	
DEPENDENT TALUKDAR (*See* INTERMEDIATE TENURE HOLDER *and* SALEABLE TENURE.)	
DEPOSIT of rent with Collector. IV.	49
Procedure of Collector thereupon. V. .	50
Suit for balance to be brought within 6 months of notice. VI. ...	..
DEPUTY COLLECTOR.	
Control of superior Revenue Authorities over, CLI.	44
Appeals from his orders to the Collector. *ib.*	...
And from certain judgments. CLV. ..	...
From the rest to the Judge or High Court. CLX.	45
Uncovenanted exercising Police functions cannot exercise powers under this Act. CLXIV.	46
Powers of, XIX.	53
Jurisdiction of, XX.	.
Can admit revival of suit. 251.	26
Covenanted delegated powers when left in charge. II. ...	54
Collector to report annually upon his proceedings. XVI. ..	59
DIET MONEY—of prisoners to be deposited with every application for arrest. XCV.	34
And to be paid, month by month, in advance so long as the imprisonment continues. XCVI.	
To be added to costs. ...	
DISPOSSESSION—of grantees of proprietary rights. XXVIII.	20
Suit does not lie for rent of land not in possession of tenant if landlord knows it. 110. 111. . . .	12 ..
DISTRAINT.	
General right of, in whom vested. CXII.	37
Cannot be exercised if cultivator has given security. *ib.*	...
can only be exercised for an arrear due from occupant cultivator. 299. ...	...
Limitation of right. CXIII.	...
Suit lies by actual cultivator if distress is levied from intermediate tenant. 188.	17
Law as to Agents. CXIV.	37
Written demand on defaulter. CXVI. ...	38
Mode of, and amount to be distrained. CXVII.	
Of crops which can, and cannot be stored. CXVIII.	...
Collector may aid. CXIX. ...	..
Rules concerning this. XVII. &c.	59
Servant employed in, to be duly authorized. CXX.	38
When to be withdrawn before sale. CXXI.	39
Application for sale. CXXII. ...	...
Officer to be employed in sale. *ib.* ...	...
Form of application. CXXIII.	...
Costs of notice to be deposited. *ib.*	
Procedure of Ameen upon application, and of Collector. CXXIV ...	
Sale to be stayed on institution of suit. CXXV.	...
SUIT concerning. XXIII. 7 ...	17

	Page.
DISTRAINT.—(*Continued.*)	
Suit may be instituted before application for, CXXVI.	39
If ryot dispute rent, the onus probandi *is upon him.* 187.	17
Release of property upon security. CXXVII.	39
SALE when to be held ; CXXVIII. ...	40
Where and how. CXXIX.	...
Postponement of sale. CXXX. ...	...
Payment of purchase money. CXXXI. .	...
Application of proceeds:—Government costs. CXXXII.	...
Officers employed in sale may not purchase CXXXIII.	...
Irregularities of distrainor to be reported to Collector. CXXXIV. ..	...
Issue of second notice. *ib.*	...
Recovery of Government costs if no sale take place. CXXXV.	41
Revision and periodical report of Officer's proceedings. CXXXVI.	...
Second proclamation after decree. CXXXVII.	...
Procedure in suits. CXXXVIII. .	...
Damages for vexatious distraint. *ib.* .	...
Suit by claimant of property distrained. CXXXIX.	42
Claim, by intervenor, of right of distraint. CXL.	...
Suit for damages, after distraint, for wrongful distraint. CXLI. ...	...
Do. illegal distraint or loss of distrained property. CXLII.	.
Do. unauthorized distraint. CXLIII.	...
Suit lies against Gomáshta personally, or against his master if he ratify, 189.	17
Limitation of these suits for damages. CXLIV. . ..	43
—RESISTANCE OF, CXLV. . ..	...
Procedure upon arrest of Defendant. XVIII.	53
DOCUMENTARY EVIDENCE OF PLAINTIFF when to be delivered. XXXVIII. .	23
Suit need not be dismissed for non-delivery. 247.	.
First Court has full power as to receiving, after time. 249-250. . ..	...
After rejection of document, a fresh case cannot be set up. 248.	...
May be required from Defendant. ... { XXXIX, ... / XLIV. ...	.. / 24
—Of DEFENDANT, production to be ordered in Summons or Warrant. ... ... { XLIV, ... / XLIX ...	... / 25
When to be delivered. LXII.	27
—Witness may be summoned to produce. LXVI.	28
EJECTMENT *does not destroy a right to hold at fixed rates.* 5.	1
Liability of RYOT to, XXI.	9
Ryot cannot be ejected for 10 *months' arrear.* 62.	...
—Of a FARMER or lease-holder. XXII.	.
If he hold over. 161. 209.	15 / 19
If the tenure is saleable, ejectment is not applicable ; 64.	9
EJECTMENT.—(*Continued.*)	
Unless there is a special condition in the lease. 166.	16
Landlord's admission of transferable character bars ejectment. 284. ...	31
If lease gives right of re-entry, legal proceedings are still necessary : 65. ...	9
But this may be provided against. ib. ..	..
SUIT for, XXIII-5.	15
Appeal lies to Judge. 162, 285. ...	*ib.* / 31
Ryot cannot question his landlord's title in a suit to eject. 161*A*.	15
A suit to cancel a zar-i-peshgí lease does not lie to Collector. 161 B. ...	...
For arrears, is barred by receipt of rent for a subsequent year, 164, 287. ..	16 / 31
Cannot be resorted to for breach of condition of lease, unless stipulated. 165....	16
Courts will grant equitable relief. 167. ...	...
Tenant cannot be ejected from house under Act X. of 1859. 286. ...	31
Intervenor cannot be heard. 290. ...	...
If 3rd party pay arrear, ejectment is barred. 291.	...
Unless the decree be for ejectment only, ryot escapes by paying arrears. 292. . .	...
—Decree for, must be conditional. LXXVIII.	31
Decree how to be executed against Ryot. LXXXII.	32
Do. against farmer, &c., LXXXIII. ...	...
SUIT AGAINST EJECTOR XXIII-6. . .	16
The action lies only when ejector is the landlord. 179-180. ...	17
Civil Court has no jurisdiction if ejector is landlord. 180*A*.	...
Otherwise the suit lies to the Civil Court. 181.	.
The mere allegation of ejector that he has a landlord's title does not bar the jurisdiction of Civil Court. 182. .	...
A Government farmer may eject before he gets his pattah. 183.	...
Heir cannot sue if landlord denies his title. 184.	..
Disturbing or dispossessing cultivators is an ejectment of their landlord. 185.	...
Ryot ousted by Magistrate's order need not refer to it. 186.	...
—Application to Collector for ASSISTANCE in, XXV.	19
Landlord installed by Collector is to be considered in legal possession. 211	...
Collector cannot consider deed of compromise. 212.	...
Mode of contesting Collector's order. 213.	...
Appeal from Collector's order. 214. ...	...
Landlord purchasing rights and interests, cannot eject previous purchaser. 215. .	..
Landlord need not apply to Collector in all cases. 216-217.	. .
—Of RENT-FREE TENANTS. XXVIII. .	20
ENCROACHMENT *of tenant how to be assessed.* 85.	11
Does not affect tenure on which original land is held. 153.	15
ENGLISH language. Judgment may be written and pronounced in, XV. ...	52

	Page.
ENHANCEMENT OF RENT,—by notice. (*See also* NOTICE.) XIII. ...	4
Landlord is not bound to prove present rent. 17C.	2
Farmer for a term may enhance. 31A.	4
Liability of middleman. 32. ...	...
Do. of homestead lands. 33. ...	...
Modes of contesting enhancement. XIV.	...
Procedure where right to hold at fixed rates is claimed. 35.	5
Ryot with no R. O. *how to contest*, 36.	...
Limitation to Suits for enhanced rent. XXXII.	22
Enhanced rent cannot be recovered by distraint. CXIII. ...	37
—OF RYOTS WITH R. O. XVII. ...	5
I. On ground of rent being too low as compared with neighbours. *ib.* 1. ...	
This is the old Regulation Law. 42A. ...	
Purchaser of Government Estate cannot enhance on this ground. 42B. ...	
Rent of whole neighbourhood cannot be raised. 42.	
Comparison need not be with the same village. 43. . .	...
A previous ex-parte enquiry is no evidence. 44.	6
II. On ground of increase of value of produce. XVII 2.	...
LEADING CASE. 45,46,47. ...	...
Tank and garden held not exempt. 48,48A.	8
Reclaimed forest not exempt. 49.	...
But improvement from Ryot's own capital exempt. 50.	.
Trees are a ground of enhancement. 50 B.	...
Onus upon Ryot pleading this. 50 A.	...
III. On ground of area of land. XVII. 3.	...
Does not apply to a Tálúkdár. 51. .	...
Nor if the pottah fixes the boundaries; 52	
Even though the pottah confer a right of abatement for deficient area. 54. ...	...
Applies to a permanent tenure, if no boundaries are specified. 53. . .	.
If excess area is disclosed in an enquiry as to value, decree must be according to disclosure. 54A. .	...
ESTATE—how to be sold in execution. CX.	36
—UNDER COLLECTOR'S IMMEDIATE MANAGEMENT. Mode of recovery of arrears in, XXIX.	21
Special remedy of debtor. *ib.* ...	...
ESTOPPEL. *A decision in a suit for arrears as to area does not estop proof of larger area in a subsequent suit.* 114. .	13
Previous decision. 112.	...
—*Of ejectment by receipt of subsequent rent* 164.	.
EVICTION. (*See* EJECTMENT.)	
EVIDENCE. (*See* WITNESS.)	
—Of local enquiry conducted by Collector in person. LXXIII.	29
—*Rules for taking*, V.	56
EXACTION of excess rent. Damages for, X.	3
Recovery of excess rent by legal process is not an exaction. 92. ...	11
The damage is matter for enquiry. 24. ...	3
SUIT for, XXIII. 3, ...	11

	Page.
EXAMINATION—of Parties or their Agents on oath. LX.	27
Substance to be recorded by Collector in his own vernacular. *ib.*	...
—Of witnesses, brought by parties. LXI. ...	
Of do. summoned. LXVII. ...	...
(*See also* WITNESSES.)	28
EXECUTION—OF PROCESS (*See* PROCESS.)	
—OF DECREE for, ...	
Delivery of Pottah. LXXX. ...	32
„ Of Kabúlyat. LXXXI. ..	...
Ejectment or reinstatement of ryot. LXXXII.	...
Ejectment or reinstatement of farmer, &c.. LXXXIII.	...
ARREARS OF RENT, or for accounts by arrest without process. LXXXIV. ...	..
By arrest of surety do. do. LXXXV...	...
Against heirs, XCI.	...
—Issue of warrant of, LXXXVIII. ..	33
Against moveable property. LXXXVII....	...
Sale of moveable property. XCVIII. ...	34
Sale of under-tenure for its own arrears. CV.	35
Do. where decree is in favour of one shareholder. CVIII.	36
Sale of other immoveable property; CX.	...
If the decree cannot be satisfied from moveable property. CIX.	...
For sums not exceeding 100 Rs., decree may be declared satisfied by one imprisonment. XCIV. ...	34
In distraint suits. CXXXVIII. ..	41
Process how to issue. XVII.	53
Rule as to, XXVII.	61
Civil Courts cannot execute a decree of Revenue Court. 293.	33
(*See also* WARRANT & LIMITATION.)	
EX-PARTE JUDGMENT. LVI.	26
In appeal. CLVII. ...	45
EXTORTION of legal rent by illegal means. XI.	3
Damages and penalty for, XII. ...	4
Suit for, XXIII., 2.	11
FAIR AND EQUITABLE rates of rent; Presumption in favour of old rates. V. ...	2
Onus upon landlord questioning them. 17B.	...
LEADING CASE. 45-47.	6
A ryot claiming fixed rent cannot fall back upon, 15.	2
Court need not go into details. 17. ...	..
Collector's Jummabandi may be assumed to have been fair and equitable at the time it was made. 17D. 17E.	.
FARM may be cancelled for arrears by decree of Court. XXII.	9
Suit to cancel, XXIII-5.	15
FARMER—suit for illegal ejectment by, XXIII-6.	16
Application for aid to eject, XXV.	19
Does not lie if he is a Mortgagee. *ib.*	..
—Of estates under Collector's immediate management, recovery of arrears from,	21
Special remedy against this special process. *ib.*	
—How to be ejected or reinstated. LXXXIII.	32
May enhance rents. 34A. ...	.

	Page.
FEES—of Mukhtars. XIV. ..	52
Rules of the Board. IX. ...	58
—*For Service of Processes.* XXIX. III. ...	62
Do. in Calcutta. X. 4.	58
FEMALE of rank—attendance of, not to be enforced. LXX. . ..	28
FINALITY of Orders and Judgments. (*See* APPEAL).	
FISHERY—*lease of, conveys no interest in the soil.* 167A.	16
FIXED RENT. (*See* RYOT at F. R.)	
FORM—of, Summons. A.	47
Warrant. B.	...
Notice to accompany Warrant, C. ...	.
Security Bond. D.	..
Warrant of execution against person. E. ..	48
Do. Do. effects. F. ..	...
Application for sale of distrained property. CXXIII.	39
Notice of Ditto. G.	48
Proclamation of Defendant. H. ...	64
Summons to witness. I.	...
Returns of distraining officers. K. ...	...
Declaration by ryot depositing rent. A.	54
Notice of Deposit of ditto. B. ..	
GOLAHS—suit for rent of, &c. 133-134. ...	14
GOMASHTA—(*See* AGENT—FOR MANAGEMENT OF LAND.)	
GOVERNMENT ESTATE.—*Rights of purchaser to enhance rent of ryots.* 17D, 42B.	2, 5
Chowkidari lands erroneously included in settlement. 154B.	15
HEIRS—execution against, after notice. XCI.	33
Continuing in possession, must prove relinquishment, or be responsible for rent. 131	13
Interfering with property, liable to rent. 131A.	...
Of ryot, cannot sue for reinstatement before Collector, if Landlord dispute his title. 184.	17
HIGH COURT—Appeal to. CLX. ...	45
HOMESTEAD *lands liable to enhancement.* 33.	4
HOUSE (*See* IMMOVEABLE PROPERTY.) ...	...
HOUSE RENT *not recoverable under Act X.* 123-125.	13
IMMOVEABLE PROPERTY.—Execution against. CX.	36
IMPRISONMENT—before hearing. LI. ...	25
After judgment, without process. LXXXIV.	32
Upon Warrant of execution. XCIII. ...	33
Limitation of. *Ib.*	...
Only one I. for one decree. XCIV. ...	34
One imprisonment may be held to satisfy a decree not exceeding 100 Rs. *Ib.* ..	...
Diet money to be advanced by Judgment Creditor. XCV.	...
For resistance of distraint. { CXLV ...	43
For resistance of distraint. { XVIII. ...	53
INSOLVENT not to be imprisoned in execution. XCIII.	33
INSTITUTION of Suit. XXXIV.	23
Where to take place. XX.	53
INTEREST—upon arrears of rent. XX. ...	9
Not to be allowed on arrear in payment of share of Revenue. 59.	...
Need not be allowed at all. 60.	..
May be allowed as Court pleases. 60A. ...	...
INTEREST.—*(Continued.)*	
Cannot be allowed in addition to damages under Section II, Act VI. of 1862, *B. C.* 60*B.*	9
May be allowed from date of Act. X *on a suit founded upon a kabulyat executed before Act.* X. 61.	...
—*Upon instalments. Does the receipt of instalment without interest act as waiver?* 137-138.	14
—Not to run on, on sums paid into Court by defendant. LXXV.	29
INTERMEDIATE TENURE,—*Holder of an, is not a Ryot.* 18.	3
Is liable to cancelment for arrears, by decree of Court. XXII.	9
Suit to cancel, XXIII. 5.	15
Application to eject from, XXV. ...	19
(*See also* FARMER.)	
—PERMANENT AND TRANSFERABLE.	
If the Rent has not been changed since the Permanent Settlement, it cannot be increased. XV.	5
The Sale Law does not override this. 39...	...
Specimen of such a tenure. 37.	...
Proved admission of Landlord sufficient for Revenue Courts. 66.	9
The Rent cannot be enhanced on ground of area. { 38	{ 5
The Rent cannot be enhanced on ground of area. { 51	{ 8
Presumption in favor of the tenure from 20 years' unchanged rent. XVI. ...	5
Change of fractional part vitiates the presumption. 40.	...
Zemindar's position does not affect the presumption. 41.	...
—Transfer must be registered in landlord's Office. XXVII.	20
Otherwise it will not be recognized in case of sale of tenure. CVI. ...	35
Landlord must admit registry. XXVII. ...	20
If he refuses, an application lies to the Collector. *ib.*	...
Sale of, (*See* SALE.)	
INTERPRETATION of words. CLXVIII. ..	46
INTERVENOR—in a rent suit claiming right to receive rent: LXXVII.	29
Must be heard. 278.	31
Judge should remand a case in which I. *appears for the first time before him.* 263.	30
A clear order of the Civil Court is sufficient authority for Collector. 264-265.	...
Instalment by Collector under Section. XXV. *gives possession.* 266. ..	...
A judgment debtor not ousted is entitled to collect rent. 267.	...
If plaintiff prove no case, is it necessary to hear I. before dismissing? 268-269.	...
Purchaser may intervene to defend suit against his vendor. 270.	...
Is a case in which an I. appears, necessarily appealable to the Judge? 271-272	...
Can only appear if he claim rent from the same ryot for the same land. 273. ...	...
Collector cannot deal with a question of right and title. 274.	...
But in such a case he must hear plaintiff before rejecting suit. 275.	...

	Page.
INTERVENOR.—(*Continued.*)	
The one point is who has been in receipt of the rents. 276. 277.	31
If I. claim only part of the rent, the remainder must be disposed of. 279. ..	31
Receipt of rent as Agent confers no title to continue to receive it. 280. ..	
And if it is alleged that the plaintiff was only an Agent, enquiry must be made. 280*A*.	...
Case cannot be decreed against I. even though he admits himself to be liable for rent. 281.	...
—*Cannot be heard in a suit to recover possession*; 169;	16
Nor in a suit for ejectment. 290. ...	32
—*Claiming tenure by transfer from ryot about to be ejected, must prove*: 163. ..	15
But he may pay the arrears and so stay the ejectment. 291....	32
—*Can appear in suit for a Kabúlyat.* 90. ...	11
—Claiming moveable property taken in execution. C.	34
Adjudication of his claim. CI.	35
If he fails to establish his right, liable to have to pay compensation, CII. ...	..
—Claiming under-tenure about to be sold for arrears. CVI.	...
—Do. immoveable property, do. in execution. CXI.	37
—Claiming distrained property. CXXXIX.	42
—Claiming right of distraint. CXL. ...	...
IRREGULARITY in conduct of sale of moveable property. CIV.	35
ISSUE of process. XVII.	53
ISSUES when and how to be fixed. LXV. ...	27
Must be adhered to. 190, &c.... ...	17
JUDGE—Appeal to, CLX.	45
JUDGMENT—by default, or upon admission. LV.	26
Ex-parte. LVI.	...
In appeal. CLIX.	45
How to be written and pronounced. XV....	52
Need not be translated. VI. ...	57
Rules regarding delivery, &c. V 14, 15. ...	...
Copy to be furnished; V. 16, *&c.* ...	
On 8 *annas stamp. VII.*	...
What to consist of. 309	45
JUDGMENT CREDITOR—If possible to give list of moveable property for seizure. LXXXVII.	33
Must, in person or by Agent, point it out. *ib.*	...
May apply for second and successive Warrants of Execution. LXXXIX. ...	...
Must provide diet money on applying for arrest. XCV.	34
May be awarded compensation for vexatious claim to moveable property. CII. ..	35
Liable to suit in the Civil Court for damages if he proceed with sale after claim. CIII.	...
May apply for sale of under-tenure for its own arrears; CV.	...
But not while Warrant of Execution against person or moveable property is out. *ib.*	35
If sale does not satisfy decree, may proceed against other property. *ib.* ...	..
Can only apply for sale of *other* immoveable property after issue of process	
JUDGMENT CREDITOR.—(*Continued.*) against the person and against moveable property. CIX.	36
(*See* LIMITATION.)	
JUDGMENT DEBTOR. (*See* EXECUTION OF DECREE.)	
—*Of Civil Court may continue to collect rent till ousted.* 116. ...	13
JURISDICTION—of Courts. XX.	53
LEADING CASE. 193.	17
—CONCURRENT, *powers of Court of*, 203 ...	18
KABULYAT must be given if pottah is tendered. IX.	3
But need not be otherwise. 23A ...	...
Need not be given for an istimrárí-tenure. 85.	11
Institution of suit is proof of tender of pottah. 73.	10
—SUIT for, XXIII-I. ..	...
In the case of resumed RENT-FREE *land.* 72.	..
Primâ facie proof of rent-free holding defeats, 81.	...
Does not lie till such land has been resumed. 154A.	15
At ENHANCED RENT *after notice.* 73. ..	10
No previous notice is necessary but decree will be prospective if at enhanced rate. 74.	...
Plaint need not call attention to fact of enhanced demand. 75.	...
Grounds of enhancement need not be stated when ryot has no right of occupancy. 76. ..	...
Proof of tenancy necessary. 78. ...	...
Shareholder having given K for some lands, must show cause why he should not give one for the rest. 79.	...
In a suit for a K. and to fix rent, proof of Pottah is not necessary. 80. .	...
Lies against a squatter. 80. ...	
Intervenor can appear under Section LXXVII. 90..	11
Collector cannot order special conditions. 91.	...
Suit may be instituted at any time during tenancy. XXXI. ...	22
—DECREE for, how to be executed. LXXXII.	32
KHAMAR lands—no right of occupancy can accrue upon. VI.	2
LAND AGENT (*See* AGENT.)	
LANDHOLDER must give a pottah to every Ryot. II.	1
But not if he does not receive rent for the land. I.	.
Is entitled to a counterpart. IX. ...	3
No right of occupancy accrues upon his private lands. VI.	2
May provide by contract against the obtaining by ryot of right of occupancy. VII.	3
Liable to pay damages for exacting excess rent or withholding receipts; X.	...
And for extortion of even legal rent by illegal means. XII.	4
May not compel the attendance of his tenants. XI.	3
Procedure for enhancing rent. XIII ...	4
Cannot enhance rent of F. R. ryots. III. .	1
Nor of dependent F. R. tenants. XV. ...	5
Can only make ryot with R. O. pay fair and equitable rates. V.	2
And can only enhance his rent on certain grounds. XVII.	5

	Page.
LANDLORD.—*(Continued.)*	
May make what arrangements he please with other ryots. VIII.	3
(*See* EJECTMENT, REGISTRY, LIMITATION, DISTRAINT and MEASUREMENT.)	
LANDLORD AND TENANT.—*Relation must be proved in a suit—for Kabuliyat*; 78. ...	10
For arrears of rent; 126.	13
For Ejectment; 179-180.	17
For damages for unauthorized distraint; 299 A.	42
IN ALL SUITS. 204 A.	18
Instance of a shareholder transferring himself into a tenant. 79. ...	10
Shareholders' arrangements among themselves do not create this relationship. 140-142. ..	14
Action lies after the relation has ceased. 204.	18
LEASE (*See* FARM, FARMER.)	
Without term, does not fix rent for ever. 22A.	8
LIMITATION.—*Can it be pleaded for the first time in Appeal?* 235-235A. 239. ...	22
Period during which a suit was pending in wrong Court counts. 236.	...
Example. 236A.	...
But Judge should exercise discretion. 312....	46
Commissioner has no discretion. 302. ...	44
And it is doubtful whether High Court can give Collector discretion. 304. ...	45
Act XIV of 1859 *does not override Act X. as to Limitation.* 235A. ..	22
—To suits for assessment of Rent-free lands; 12 years from date of title. XXVIII. ...	20
If passed, does not revive upon a succession. 234B.	21
—To suits in general under this Act; one year. XXX.	22
—„ „ For Pottahs and Kabuliyats; during tenancy. XXXI.	...
—*In a suit for abatement, dates from demand of excess rent.* 101.	12
To suits for ARREARS OF RENT; 3 years from close of the year. XXXII. ...	22
Non-payment of Rent for a lengthened period does not bar suit. 237. ...	...
Only 3 years rent can be recovered. Court must notice this issue. 238-239. ...	...
In suits for rent due when the Act was passed. 240.	...
For arrear of enhanced rent after notice; 3 months. *ib*	...
For balance of an arrear, if a portion is deposited; 6 months. VI.... ...	50
—Against a Collecting agent; one year from close of agency, XXXIII.	22
Suspension closes Agency. 241. ..	...
Special provision in case of fraud. XXXIII.	...
The fraud must be by the Agent himself. 242A.	23
Right of action revives if Agent renders an account, but in Civil Court. 242B. ...	...
This Section does not apply to sureties, 212	...
—To application for rehearing of case decided ex-parte or by default 15 days LVIII.	26
From what period does it run. 252. ...	...
—Do. of case in which Collector's Judgment is final; 30 days. CLIV. ...	44
LIMITATION.—*(Continued.)*	
To application for re-admission of appeal; 15 days. CLVIII.	45
—Do. for revision of Collector's orders in Measurement case; 15 days. X. ...	51
—Of Warrant of execution; 60 days from date of Warrant. LXXXVIII.	33
—Of execution of decree, without notice; one year. XC.	...
—With notice, if for sum not exceeding 500 Rs.; three years. XCII.... ...	...
—Do. exceeding 500 Rs.; three years from date of last process. *ib.*	...
—Of imprisonment in execution. XCIII. . .	...
—To suit in Civil Court to establish right to moveable property taken in execution; one year. CIII.	35
—To Do. Do. for damages for irregularity in sale of moveable property; one year. CIV.	...
—To right of distraint; arrear of one year. CXIII.	37
—To suit to contest demand of distrainor; 15 days. CXXIV.	39
—Of costs to be recovered on behalf of Government if sale of distrained property do not take place; 10 Rs. CXXXV.	41
—To application for sale of distrained property, from Collector's order; 5 days. CXXXVII.	...
—To suit for damages connected with distraint; 3 months. CXLIV. ...	43
—To complaint of resistance of distraint; 15 days. CXLV.	...
—To *appeals* from *orders* of a Deputy Collector to a Collector; 15 days. CLII. ...	44
—Do. *Judgments*; Do. Do. CLVI. ...	45
—Do. orders of a Collector to Commissioner; 30 days. CLII.	44
—To value of suit in which Collector's judgment is final; 100 Rs. CLIII. ...	...
—To value of suit in which appeal lies to Judge; 5,000 Rs. CLX. ...	45
—To appeals to Judge or High Court. CLXI.	46
—To right of shareholder in an undivided estate to sell under-tenure. CVIII. ...	36
—Do. Do. to distrain. CXII.	37
LOCAL ENQUIRY—Law in regard to. LXXIII.	29
If conducted by Collector in person, his recorded observations are evidence. *ib.*	...
Rules, as to, XXIV.	60
LUMPING SUITS *is forbidden.* 197. ...	18
MAGISTRATE is to assist execution of decree for ejectment or reinstatement, on Collector's application. LXXXII. ...	32
MANAGERS of estates under Collector—may be sued as landlords, XXIX. ..	21
May proceed against defaulter by Regulation VII. of 1799. *ib.*	...
Special remedy of defaulter in that case. *ib.*	...
—May distrain. CXIV.	37
MARKET—*Suit for rent of.* 135. ...	14
MEASUREMENT—Landholder has a right of. IX.	51
So has Shareholder. 316A.	...
If opposed, may apply to Collector. IX....	...
Penalty to tenant not attending upon Collector's order. *ib.*	...

	Page.
MEASUREMENT.—(*Continued.*)	
Lessee under Court of Wards has these powers. 316.	51
Collector to measure upon landlord's application; X.	...
And to record assessment and tenures upon his special application. *ib.* ...	...
Rules as to this. XXVII.	61
Procedure if he cannot ascertain these particulars. X.	51
Mode of contesting Collector's orders. *ib.* ...	...
—To be with standard pergunnah pole. XI.	52
MESNE PROFITS *cannot be recovered in Collector's Court in a suit for possession.* 171.	16
MIDDLEMAN *liable to enhancement.* 32. ...	4
MORTGAGEE cannot be ejected by Collector. XXV.	19
Nor does suit to eject lie. 161 *B.* ..	15
May bind himself as a tenant. 160. ...	...
MOVEABLE PROPERTY—Execution against, LXXXVII.	33
List to be prepared and published before sale. XCVIII.	34
Cannot be sold for ten days after attachment. XCIX.	..
Adjudication of claim to, CI. (*See* SALE)	35
MUKARARI *and* MOURUSI. 67 A. ..	10
MUKHTAR (*See* AGENT.)	
MULTIFARIOUS *actions, bad.* 198. ...	18
NAIB. (*See* AGENT FOR MANAGEMENT OF LAND.)	
NAZIR—to report service of Summons. XLVI.	24
Interpretation of word. CLXVIII. ...	46
His duties as to sales; XXI, &c. ...	60
And local enquiries. XXV.	61
NIJ-JOT lands. No right of occupancy can accrue upon, VI. ...	2
NON-ATTENDANCE—of either party on day of hearing. LIV.	26
Of plaintiff. LV....	..
Of defendant. LVI.	...
Of one or both parties, on day of trial of issues. LXVIII.	28
Do. do. at hearing of appeal. CLVII....	45
Of ryot at measurement. X... ...	51
NOTICE—OF ENHANCEMENT. XIII. ...	...
Not necessary where the rate is fixed by decree. 25.	4
Even though the land was previously rent-free. 27.	...
Must be served, though the rent of a part has been already enhanced. 26. ...	...
Must be issued for each share separately. 87.	11
Need not state area, but, if it does, rent will be adjusted accordingly. 28. ..	4
May be signed by Naib. 28*A.* ..	...
Need not be signed by landlord or his agent, 29.	...
Is invalid unless it contains all the required particulars. 30.	...
But this objection may be waived. 31 ...	...
Not vitiated by inclusion of land not belonging to landlord. 150.... ...	15
Nor by any slight irregularity. 151. ..	...
But must be reasonably precise. 151*A.* ...	...
Landlord may sue for less rent than is contained in notice. 31*A.*	4
NOTICE—OF ENHANCEMENT.—(*Continued*)	
Can Court make declaratory order for the future? 151*A*, 151*B*.	15
Cannot be issued upon farmers. 34. ...	4
—OF RELINQUISHMENT. XIX.	8
Verbal intimation in reply to Notice of Enhancement enough. 56.	...
But relinquishment must be proved besides the notice. 56*A.*	...
—OF SALE of distrained property. CXXIII.	39
Second do. CXXXIV.	40
—OF DEPOSIT OF RENT. V.	50
ONUS PROBANDI upon landlord to prove his right to enhance, if ryot proves that the rent has been unchanged for twenty years. IV.	2
The same in the case of a dependent talukdar. XVI.	5
Does it lie upon landlord desiring to enhance, to prove that Ryot's rent is not fair and equitable? 17 *A* and 17 *B.* ...	2
What proof of twenty years' Rent is necessary? 40 *A.*	5
Upon Ryot pleading that increased produce is due to his expenditure. 50 *A.* ...	8
Upon party disputing rent decreed in a former suit. 88.	11
Upon plaintiff demanding rent for a year antecedent to one for which rent has already been decreed. 102. ...	12
Upon party admitting receipt of greater part of a sum of rent due for several years, to prove that the rent of the earlier years is not paid. 103.... ...	...
Upon tenant paying one years rent when two years were due, to prove that his payment was not applied to the earlier year's debt. 104.	...
Upon tenant admitting tenancy of part of the land. 127.	13
Upon defendant to prove that he is not tenant. 128.	...
Upon tenant pleading payment of admitted rent. 128 *A.*	...
Upon landlord demanding rent above what his Sazawal has collected. 130 *A.* ...	..
Upon heirs remaining in possession up to a certain date, to prove that they did not continue. 131.	...
Upon land lord who has received for a long period less rent than he was entitled to. 139 *A.*	14
On defendant in a rent suit to prove an adverse pottah. 149.	15
Upon intervenor claiming to hold by transfer a tenure from which landlord wishes to eject original tenant. 163. 210.	*ib.* 19
Upon shareholder who has given kabulyat for some of the land. 179.	17
Upon Ryot resisting distraint, upon ground that his rent is less than alleged by landlord. 187.	..
Upon landlord claiming rent from land held rent-free. 230.	21
PARTIES. (*See* PLAINTIFF and DEFENDANT.)	
PATNI TALUK *cannot be created by Collector in a suit for a Kabulyat.* 91. ...	11
Arrears to be recovered, as before, under Regulation VIII. of 1819. CLXVI. ...	46

Page.

PATNIDAR *has only a limited right to void encumbrances on his purchase.* 83. 11
Can sue before Collector for abatement. 95. ... ...
Has same rights as zemindar. 234. ... 21
PENALTY FOR,—Extortion of rent. XII. ... 4
False verification of claim. XXXVI. ... 23
Principal not liable for falsehood of his Agent. 246. .. ..
False declaration in making deposit of rent. V. 50
Unlawful distraint. CXLIII. 42
Resistance of distraint. { CXLV. ... 43 / XVIII. . 53
Do. of process. CXLVII. .. 43
PEONS—*Rules for the employment of, XXIX.* 62
PERMANENT SETTLEMENT—*The legal date of, is 22nd March,* 1793. 7. 2
PERSON—Execution against. (See EXECUTION.)
PERSONAL APPEARANCE—of defendant. XLIII. 24
Of parties, may be required if Agent's knowledge is defective; LXIV. ... 27
Or, generally, though represented by Agent. LXXI. 29
Of Agents for the management of land. LIX. 27
Of females of rank and respectability not to be enforced. LXX. 28
PETITION. (See APPLICATION) ... ..
PLAINT—Form of, (See also STATEMENT OF CLAIM). XXXIV. 23
PLAINTIFF—to present Statement of Claim; XXXV, ...
And verify it. XXXVI. ... ...
To file documents with his claim. XXXVIII. ... ...
May summon defendant to { XXXIX. ... / produce document. ... { XLIV. 24
May show cause for personal attendance of defendant. XLIII. ... .
To deposit cost of serving Summons or Warrant with Statement of Claim. XLVIII. ... ...
May apply for Warrant of arrest; XLIX. 25
Depositing diet money. XCV. ... 34
And for a second warrant or proclamation. LII. 25
Liable to the defendant in compensation for unreasonable application for Warrant. LIII. 26
If case is struck off, { XLVIII. . 24 / may sue again. ... { LIV. ... 26
If absent at the hearing, may suffer judgment by default. LV. . ...
Or if he do not attend when summoned personally. LXIV. 27
But may, in such circumstances, apply for a rehearing; LVIII. 26
As also in certain other cases. CLIV ... 44
To be examined and cross examined at hearing. LIX. .. 27
May bring witnesses at the hearing. LXI.
May be summoned personally if Agent has insufficient knowledge. LXIV. ... ..
And generally though represented by Agent. LXXI.... 29

PLAINTIFF.—(*Continued.*)
If a female of rank and respectability, is exempt from personal attendance. LXX. 28
Liable to defendant in damages for unreasonable claim for rent. III. . 49
Must prove his case as laid, and may not shift his ground. 190-2. 17
But may bring fresh suit on fresh grounds, 192. ... ...
Cannot lump suits. 197. 18
(*See* JUDGMENT CREDITOR)
POSSESSION—SUIT TO RECOVER, XXIII 6 ... 16
Intervention of third party does not bar Collector's Jurisdiction. 168. ... ...
Intervenor cannot be heard. 169. ... ...
Including mesne profits, may be brought in Civil Courts; 170. ... ...
But not before Collector. 171. ... ...
Right to possession must be considered: 172 ...
But cannot be dealt with independent of dispossession. 176. ... ...
But a suit for confirmation of possession lies. 177. ... ...
Does a suit to compel zemindar to admit purchase of a transferable ryot's tenure? 1781. 178*A*. ... ...
Where tenancy is undisputed, the issue is only as to the legality of the ejectment. 173. ... ...
Invalidity of ryot's title-deeds does not justify decision adverse to him. 174. ... ...
Ryot without a right of occupancy may sue. 175. . .. .
Shikmi Talukdar may sue. 185*A*. ... 17
POTTAH—to be given to every ryot. II. ... 1
Even though there be, by accident, a small arrear of rent due. 68. 10
Must be given to a F. R. ryot at F. R. III.... 1
To a ryot with R. O. at fair and equitable rates. V. 2
And to a ryot not having such rights at such rates as may be agreed upon. VIII. 3
If there is no such agreement, no pottah is demandable. 23. ... ...
Is not demandable for land for which rent is not paid. 1. 1
Holding of the land must be proved. 70. ... 10
The tender of a pottah entitles grantor to counterpart. IX. 3
—SUIT FOR. XXIII. 1. 10
To compel confirmation by auction purchaser of an istimrari pottah does not lie. 71. ... ...
May be instituted at any time during tenancy. XXXI. 22
—Term of, to ryot with R. O. may be fixed by Collector. LXXVI. ... 29
But it must not extend beyond ten years; ... .
Nor beyond the landlord's tenancy, *ib.* .. ...
—Decree for, how to be executed. LXXX... ... 32
POWER OF ATTORNEY—to agent to distrain CXIV. 37
To land agent presenting claim, not necessary. 243. 23
PRESUMPTION from twenty years' holding at fixed rates, IV. XV. . . ... 5 / 2
The twenty years' holding must be fully proved; it cannot be presumed. 14 C. ..

	Page.
PRESUMPTION.—(*Continued.*)	
(*See* RYOT with F. R.)	
PRIVATE LANDS of landholder—No right of occupancy accrues upon, VI. ...	2
PROCEDURE FOR—Enhancement of Rent. XIII.	4
Resisting enhancement. XIV. ...	...
Procuring aid to eject. XXV. ...	19
Contesting ejectment by Collector. 213.	.
Resumption of rent-free lands. XXVIII.	20
Recovery of arrears in estates managed by Collector. XXIX.	21
Institution of suit. XXXV. ...	23
Obtaining documents from defendant. XXXIX.	...
Amendment of Statement of Claim. XLII.	24
Issue of summons. XLIII. ...	
Do. of warrant of arrest. XLIX. ...	25
After arrest of defendant. { L and LI. ...	...
If Warrant cannot be executed. LII. ...	...
Defendant appear upon proclamation. *ib.*	...
Neither party appear at hearing. LIV....	26
Defendant only appear. LV. ...	..
Plaintiff only appear. LVI. ...	..
At hearing adjourned for attendance of defendant. LVII.	...
On application for rehearing. LVIII. ...	...
Appearance of parties. LIX. ...	27
Examination of parties. LX. ...	...
If agent's knowledge is deficient. LXIV.	.
For fixing and trying issues. LXV. ...	.
Summons of witnesses. LXVII. ...	28
Trial of suit in absence of one or both parties. LXVIII.	...
Adjournment. LXXII.	29
Local enquiry. LXXIII.	...
Fixing term of pottah of R. O. Ryot. LXXVI.	...
Upon appearance of Intervenor. LXXVII.	..
In a suit for ejectment. LXXVIII. ...	31
Delivery of Judgment. XV.	52
Execution of decrees. (*See* EXECUTION.)	
Arrest in execution. XCIII.	33
Attachment of moveable property pending sale. XCIX.	34
Adjudication of claims to ditto. CI. ...	35
Ditto ditto to an under-tenure sold for its own arrears. CVII.	36
In distraint. (*See* DISTRAINT.)	
Issue of Process. XVII.	53
Service of ditto. CXLVI.	43
Resistance of ditto. CXLVII. ...	..
Holding of Court. CXLVIII. ...	...
Charges against Agent or Mukhtars. CXLIX.	
In appeals to Collector. CLVII. ...	45
Ditto to Judge or High Court. CLXI ...	46
On deposit of Rent, by under-tenant or Ryot. V.	50
On payment by defendant into Court after tender. VII.	...
Ditto ditto without tender. VIII. ...	..
For measurement of land by Landlord. IX.	51
By Collector on Landlord's application. X.	...
Record of Assessment and tenures by Do. on Special Do. *ib.*	..

	Page
PROCEDURE FOR.—(*Continued.*)	
Attachment. XVI.	52
—*Of Civil Court how far applicable.* 194-195.	18
(*See also* CIVIL PROCEDURE.)	...
Error by Collector rectified by High Court. 234A.	21
PROCESS, Issue of. XVII.	53
Costs and Service of, CXLVI. ...	43
May be served on Land-Agent LXIX. ...	28
Resistance of, CXLVII.	43
Rules for Service and Execution of, XXIX.	62
Do. Do. in Calcutta. X. 2, *&c.* ...	58
(*See also* SUMMONS, SUBPŒNA, WARRANT, PROCLAMATION, NOTICE.)	
PROCLAMATION—for appearance of Deft. LII.	25
Form of, H.	64
Proof of Service of, or of summons, necessary before ex-parte judgment. LVI. ...	26
—Of sale of property in execution. XCVIII.	34
Do. of Distrained Do. CXXIV. ...	39
Second Do. Do. CXXXIV.	40
PRODUCE OF LAND—hypothecated for rent. CXII.	37
May be distrained for rent of land on which it grows only. CXV. ...	38
Supremacy of lien of landlord on, CXXXIX.	42
RECEIPT—Penalty for not giving. X.	3
RECORD-of examination of parties. LX. ..	27
Do. of witnesses. LXVII.	28
Of judgment. XV.	52
—Of assessment and tenures in an estate, by Collector. X.	51
RE-ENTRY, Suit for (*See* POSSESSION and EJECTMENT) XXIII. 5.	15
REINSTATEMENT (*See* EJECTMENT) of Ryot illegally ejected. LXXXII. ...	32
Of farmer, &c., Do. LXXXIII. ...	...
REGISTRY of transfers of intermediate permanent transferable tenures. XXVII ...	20
Consequence of non-registry. CVI. ..	35
(*See also* INTERMEDIATE TENURES) ...	
Appeal from Collector's orders lies to Commissioner. 219....	20
But, if landlord disavows tenancy, to Civil Court. 161 B.	15
Does not apply to Ryots' Jotes. 220. ...	20
Proprietor of registered tenure must pay rent although not in possession. 222. ...	...
Unless Zemandar has ousted him or recognized the transfer. 221.	...
REHEARING—of Suits in which Collector's judgment is final. CLIV.	44
Of case regarding record of tenures. X. ...	51
RELINQUISHMENT of land by Ryot. XIX. . .	8
Can be effected by verbal intimation in reply to notice. 56.	...
Must be proved, as well as notice. 56A. ...	...
Without formal notice, does not exempt from payment of rent. 57.	9
Unless the land has been taken by Government and Landlord knows it. 58. ...	...
RENT—Suit to fix rate of. XXIII. 1. ..	10
Cannot be fixed for a number of years. 77.	...

Page

RENT —(Continued)
A claim to hold at F R can only be supported by proof of an unchanged rate for 20 years 82 — 11
A purchasing Patnidar has only a limited right to avoid incumbrances 83
Rent may be imposed on a service tenure when service is no longer required 84
Assessment of land upon which tenant has encroached 85.
Suit may be brought by shareholder 86
Rent formerly decreed is the rent, unless disproved 88
Rent declared by Collector in partition proceedings is no legal evidence 89
Ryot must pay rent he has agreed for although area prove deficient 110A — 12
—Receipt for, prescribed under penalty — X .. — 8
(See ARREARS EXACTION EXTORTION &c.)
RENT-FREE LAND—Assessment of XXVIII — 20
Appeal lies to Judge 223
Suit must be brought before Collector to resume lands held rent free under a title dating after 1st December 1790 224
And can be brought before him only on that ground 232. — 21
But if landlord does not know date, he may sue in either Revenue or Civil Courts(?) 225, 233
Dismissal of suit by Collector does not bar action in Civil Court,
But it must be in a different shape 229
Revenue Courts have no jurisdiction if title dates before 1st December, 1790 — 21
228
Landlord must prove that rent has been paid since that date 229-231
Statement of the law generally 230
Landlord cannot resume more than 100 *bighas held under one deed if the title dates before* 1790 233
Patnidar has the same rights as a zemindar 234
Suit does not lie for kabuliyat or rent on account of rent free land till it has been resumed, 54*A* — 15
And legally assessed 54*B*
REPRESENTATIVE Execution against, after notice given XXI — 3
REs JUDICATA—(See ESTOPPEL)
A suit calling in question a previous dismissal does not lie 112 — 13
Though a dismissal by default does not satisfy a claim 113
RESISTANCE—of Distraint (XXLV, XVIII) — 43, 53
—Of Process CXLVII — 43
REVIEW *of Judgment by Judge* 313, 314 — 46
REVIVAL of suit decided ex-parte or by default LVIII — 26
Law as to appeals from orders passed under that section XIII — 52
—Of appeal dismissed in default XLVIII — 45
Order of Deputy Collector admitting revival is final 251 — 26
Collector may revive suit heard by Deputy Collector under certain circumstances 252

Page.

RIGHT OF OCCUPANCY (See RYOT WITH R O)
Can be provided against by definite written stipulation, VII — 3
Otherwise, accrues from twelve years' holding, with or without pottah, VI — 2
But not upon landlord's private lands, *ib*
Nor on lands held from a Ryot *ib*
The right lives from father to son, *ib*
And is transferable, though landlord need not register transfer 22 *B* — 3
None but ryots can obtain it 18
Trespassers cannot obtain it, 21
Nor farmers 22
RYOT —EVERY RYOT—is entitled to a pottah, II — 1
For land for which he pays rent, I.
And must give a counterpart IX. — 3
How he acquires R O VI — 2
Holding under another ryot cannot acquire that right *ib*
Rent of, cannot be enhanced without notice, XIII — 4
Except by decree in suit 25
How to contest enhancement XIV
How to relinquish land XIX — 8
Verbal intimation in reply to notice of enhancement enough 56
But must prove actual relinquishment. 56*A*
Liable to ejectment for arrears at the end of the year XXI — 9
But if he holds under an unexpired pottah, a decree must first be obtained *ib*
Suit by, for—Pottah XXIII I — 10
Damages for illegal exaction *ib* 2. — 11
Excessive demand of rent *ib* 3
Illegal ejectment by 6 — 16
Regarding distraint 7 — 17
In estates under Collector's direct management, liable to process under Regulation VII of 1799 XXIX — 21
Special remedy against this process *ib*
How to be ejected or reinstated in execution LXXXII — 32
May deposit rent with Collector if landlord refuse to take it IV — 49
Penalty if he make false declaration in doing so *ib*
Penalty for non attendance at measurement, after Collector's order IX — 51
Status of, before Act X 8 — 2
An intermediate tenant is not a, 18 — 3
Neither is a "mustajir, 9 — 2
Nor a farmer, 19 — 3
Nor a middleman 20
His tenure is sometimes transferable 67 — 1
RYOT—HOLDING AT F R defined —III — 1
Is entitled to pottah at those rates ib
The issue is whether the RENT *has been changed, transfers of* POSSESSION *do not invalidate the tenure*, 2
Is he liable to ejectment by auction purchaser? 2 and 3
Failing to prove a right to hold at F R cannot fall back upon R O 6 — 2
Change in the rent of a fractional part of the tenure invalidates the whole 4 — 1
Division of the tenure among heirs, does not change it, 4*A*

	Page
RYOT—HOLDING AT F. R.—(*Continued*)	
Nor consolidation of several holdings by Government Settlement Officer. 4*B.*	1
Eviction does not destroy the tenure. 5. ...	
PRESUMPTION in his favor from 20 years' unchanged rent. IV. ...	2
This uniformity of rent must be actually proved. 14*C.*	
Plaintiff should have opportunity to rebut. 14*B.* ...	
He must plead that he has held since the permanent settlement. 11. ...	...
That is since 22nd March 1793. 7. ..	...
If he pleads a pottah of a later date, however ancient, the presumption fails, unless the pottah be consistent with the main plea. 12. ..	
If he fail to prove a pottah he cannot fall back upon presumption 13.	...
Proof of the holding of the ryot or his transfero is essential for the presumption. 14. ..	
Proof that the ryot's title commenced later than the settlement, vitiates it. 14*A*	...
But division among heirs is not necessarily commencement of fresh title, though default of one of such heirs voids the whole tenure. 4*A.* ...	1
There is no right intermediate between this right and R. O. 10.	2
His jote cannot be divided without zemindar's consent 157.	15
His title, once judicially established, cannot be questioned on the authority of a decree for arrears of rent. 158. ..	
RYOT—WITH R. O.—(*See also* RIGHT OF OCCUPANCY) Defined. VI.	2
Entitled to a pottah at fair and equitable rates. V.	
His rent cannot be altered till it is proved to be not "fair and equitable" *ib.* ..	2
(*See* FAIR AND EQUITABLE.)	
May sublet his lands. VI. ..	
Grounds upon which only his rent may be enhanced. XVII.	5
Has no right to any share of the rent 16.	2
In fixing rent, Court need not go into details. 17.	
Cannot be ejected by Collector summarily. XXV.	19
Nor by Auction purchaser. 218.	
Collector may fix the term of his pottah LXXVI. ..	29
RYOT—WITHOUT R. O.—Entitled to pottah at rates, and for the term, which he and his landlord may agree upon. VIII. & LXXVI	3 / 29
If they cannot agree, he cannot get pottah. 23.	3
May be ejected by Collector on landlord's application XXV. ...	19
Resisting enhancement, how to proceed 36, 100.	5 / 12
May sue for possession. 175. ..	16
If he hold without agreement, is only liable retrospectively to a fair rate of rent. 23*A*, 160*A*. ...	3 / 15
RYOT WITH R. O.—(*Continued.*)	
Holding under a lease without term, entitled to consideration for improvements. 22*A*. ...	3
SALE—OF MOVEABLE PROPERTY in execution. XCVIII.	34
Board's Rules concerning, XX. *&c.* ...	60
May be stayed on application of claimant. C.	34
Not vitiated by irregularity. CIV. .	35
—OF UNDER-TENURE, FOR ITS OWN ARREARS. CV.	35
Zemindars lien overrides all prior claims. 294. 294*A*. 295. .	...
Purchaser's title overrides private transfers. 117.	13
Board's Rules regarding; XIII. ...	58
May be stayed on application of claimant. CVI.	35
No appeal to the Civil Court for reversal. 300.	44
—Do. at suit of one shareholder in a joint estate. CVIII.	36
—Of HOUSE OR BUILDING, or other immoveable property. CX.	
—Of UNDER-TENURE NOT FOR ITS OWN ARREARS. *ib.* ..	...
Board's Rules regarding, XIV. .	59
Collector can give possession to purchaser. 298.	37
—Of produce of land. (*See* DISTRAINT.)	
—Of Patni Estates. CLXVI.	46
Purchaser of land at sale in execution, is entitled to rents from date of purchase. 115.	13
SALEABLE SUBORDINATE TENURE—Warrant of arrest cannot issue for the recovery of arrears of, XLIX.	25
Holder cannot be ejected. XXII. ...	9
SAR-BA-RAH-KAR, in estate managed by Collector, may be sued as landlord. XXIX	21
SAZAWAL— *Short collections by, liability of tenant for;* 130.	13
But Landlord must prove his accounts. 130*A*.	...
SECURITY—(*See* SURETY.)	
—BONDS, *Proper stamp and character.* III.	55
SERVANT—employed in distraint, must have written authority. CXX. ...	38
Suit lies for damage by his act. CXLII.	42
SERVICE TENURE—*may be assessed when service is no longer required.* 84.	11
But rent cannot be enhanced till tenure is resumed. 84 *A*. ...	...
SET-OFF—*the power of Collector to investigate.* 105. *&c.*	12
Payment of revenue by Patnidar. 152...	15
SHAREHOLDER—in joint undivided estate.	
Limitation of his power to sell an under tenure for its own arrears. CVIII. ..	36
Do. in right of distraint. CXII	37
May sue to fix his share of the rent. 86.	11
Cannot enhance rent of his share without separate notice. 87.	...
Giving kabulyat, is liable as tenant. 79. .	10
Is liable for the rent of lands which he occupies separately. 141*A*. ...	14
Specimens of arrangements which do not transfer S into a tenant. 140. 142. ..	
Right of, to sue for his share of rent. 143. 145.	

	Page.
SHAREHOLDER.—(*Continued.*)	
Ryot paying to one shareholder, protected, unless notice has been given. 145*A*. .	14
Cannot sue ryot who has always paid to other shareholders. 115*B*.	...
Has a right to measure. 316*A*	51
SIR lands of Landlord—no right of occupancy accrues upon. VI.	2
SPECIAL APPEAL—*Law as to,* 305, 8. 311. ...	45
SPECIAL APPLICATION of landlord for record of tenures and assessment. X. ...	51
SPECIFIC PERFORMANCE OF DECREE FOR,	
Pottah. LXXX. ...	32
Kabulyat, LXXXI. .. .	...
Ejectment or reinstatement of ryot. LXXXII.	...
Do. of farmer. LXXXIII	.
STAMP—NOT REQUIRED—on application for,	
Issue of notice of enhancement. XIII.	4
Summons of witness. LXVI. ..	28
Written authority to servant employed in distraint. CXX	38
—Of 8 annas on appeal for judgment of Deputy Collector to Collector. CLVI.	45
—Upon appeal to Judge or High Court. CLXI .	46
—Upon applications to deposit Rent; as in suits V. ...	50
—Upon appeal from order rejecting applications. XIII.	52
—*Upon Security Bonds III* ..	55
The general law in connection with rent-suits, expounded IV.	
—*On copies.* VII. ...	57
STANDARD POLE OF Measurement. XI. .	52
How to be determined. 317. .	
STATEMENT OF CLAIM—what to contain. XXXIV. ...	23
—Do. in suits for arrears of rent. XII. .	52
—Do. in suits for ejectment or re-entry. XLI.	24
—*Do. in a suit for a kabulyat* 242*C*.	23
By whom to be presented. XXXV.	.
Must be accompanied by documents, if any. XXXIX. . ..	
And by deposit of costs of Summons or Warrant. XLVIII ...	24
If imperfect, may be returned, or amendment permitted XLII.	...
STORED PRODUCE—may not be distrained. CXV.	38
SUB-DIVISIONAL Deputy Collector may exercise all the powers of a Collector XIX. . .	53
Jurisdiction of, XX. ...	...
SUBPŒNA—(*See* SUMMONS TO WITNESS)	
SUBSISTENCE—(*See* DIET MONEY.)	...
SUCCESSION. (*See* TRANSFER)	...
SUITS *under Act X are Regular Suits* IX.	58
Where to be instituted XX. . .	53
How Do XXXIV	23
When Do. I.	51
By whom Do. XXXV.	23
Within what time—(*See* LIMITATION.)	
COGNIZABLE BY COLLECTOR ONLY FOR,	
Pottah or Kabulyat, or to fix rates of rent. XXIII.1.	10
Damages on account of illegal exaction of rent *ib.* 2. .	11
Refusal of receipts or extortion of rent. *ib*	
SUITS.—COGNIZABLE BY COLLECTOR ONLY FOR.—(*Continued.*)	
Abatement and excessive Demand. XXIII.3	11
Arrears of rent, &c. *ib.* 4.	12
Ejectment and Cancelment. *ib.* 5. ...	15
Arrears and Ejectment. LXXVIII. .	31
Re-entry. XXIII 6 .	16
Connected with distraint *as follows. ib.* 7.	17
To contest claim of Distrainor. CXXVI.	39
By claimant of distrained property. CXXXIX .. .	42
After distraint, for damages. CXLI. ...	.
For illegal distraint. CXLII. . .	..
For distraint without authority CXLIII.	
For resistance of distraint. CXLV. ...	43
—Against Agents for collection of rents, &c. XXIV.	18
—To dispossess grantees of proprietary right or assess rent-free land. XXVIII.	20
Plaintiff must prove his case as laid; he cannot shift his ground. 190, 191 ...	17
But he may bring a fresh suit on fresh grounds. 192.	
Jurisdiction in suits. 193.	
Procedure of Civil Courts how far applicable. 194, 195. ...	18
Must be brought for whole claim 195 ..	
Involving title, do not lie in Revenue Courts. 196.	.
For several claims lumped together, do not lie. 197. ...	.
Multifarious, do not lie. 198 .	...
Doctrine as to admission and custom. 199	
Death of party need not abate a suit. 200.	...
Appellate Court cannot, without reason, accept a document rejected by Lower Court. 201.	
Court of concurrent jurisdiction cannot question finding. 203.	
SUMMONS (*See* PROCESS)—when to be issued. XLIII.	24
What to contain. XLIV.	
How to be served *in the District.* XLV	..
Service how to be reported. XLVI.	...
How to be served *in another district.* XLVII.	
Costs how to be provided. XLVIII. ...	.
Service of, or of proclamation, must be proved before ex-parte judgment. LVI.	26
To WITNESS—need not issue; { XLIV. .	24
{ LXI. ...	27
But may issue. LXVI . .	28
To opposite party before rehearing. LVIII.	26
For resistance of process. CXLVI. ...	43
SURETY of collecting Agent—SUIT AGAINST, XXIV.	18
Limitation of one year. 242. .	23
—Of arrested defendant. LI. .	25
—Execution against. LXXXV. ...	32
—Of a farmer, suit against 129. ...	13
—Of distrainee. CXXVII. .	39
SURVEY.—(*See* MEASUREMENT)	
TAHSILDARS—in estates managed by Collector, may be sued as landlords. XXIX. ...	21
TALUKDARS—(*See* INTERMEDIATE TENURE-HOLDERS.)	
TENANT—(*See* RYOT, INTERMEDIATE TENURE HOLDER, *and* LANDLORD AND TENAN.)	
To create the relation of tenant, no express agreement is necessary. 80. .	

	Page.
THIRD PERSON.—(*See* INTERVENOR.)	
TIME for commencement of suits.—(*See* LIMITATION.)	
TRANSFER of transferable tenure to be registered in landlord's office. XXVII. ...	20
Consequence of non-registry. CVI.	35
Can only be got over by proof that zemindar has recognized the transfer. 296. ...	36
Long receipt of rent from transferee is recognition. 297.	...
TRANSFERABLE UNDER-TENURE.—SALE of, (*See* SALE.)	
Holder cannot be ejected unless there is a special provision in the lease. XXII....	9
Specimen of; 37	5
A ryot's jote is sometimes transferable. 67.	10
A tenure not mukarari may be transferable 67*A*.	...
R. O. is *transferable* 22 B.	3
TRANSLATION *of Judgment in a rent suit not necessary.* VI.	57
TRESPASSER *cannot acquire R. O.* 21. . .	3
Is bound to pay rent and give a kabulyat, 80.	10
TRIAL of issues—day when to be fixed. LXV.	27
Witnesses to be produced at; LXVI. ...	28
Consequence of non-attendance of parties at; LXVIII.	...
TWELVE YEARS.—(*See* RIGHT OF OCCUPANCY.)	
TWENTY YEARS—(*See* PRESUMPTION.)	
UNDER-TENANT—(*See* RYOT.)	
UNDER-TENURE—Registry of transfer of, XXVII.	20
Sale of, (*See* SALE.)	
Measurement of, (*See* MEASUREMENT.)	
VENUE of suits. XX.	53
VERIFICATION of Statement of Claim. XXXVI	23
Penalty for falsehood in, *ib.* ...	...
Principal is not liable for Agent's falsehood. 246.	...
WAIVER—*of claim to interest for delay in payment, by receipt of instalments without interest.* 137-138.	14
—*Of right to receive rent at particular place.* 139.	25
WARRANT OF ARREST.—Issue of, XLIX. ..	25
Can only issue if defendant resides in the District.	.
Cost of, how to be provided. XLVIII. ...	24
Cannot issue for the recovery of arrears of saleable tenure, XLIX. ...	25
Second, may issue. LII.	...
—OF EXECUTION, its date and currency. LXXXVIII.	33
Second and successive may issue. LXXXIX	...
Notice must be given before it can issue after one year's inactivity; XC. . .	
And before it can issue against heir or representative. XCI.	...
Cannot issue after 3 years; XCII. ...	..
Unless value exceeds 500 Rs. *ib.* ...	...
—AGAINST PERSON. XCIII.	
—Against property of distrainor, to recover costs when no sale takes place. CXXXV.	41
—For arrest of person guilty of resistance of process. CXLVII	43
WITNESS—brought by parties at hearing, to be examined, { XLIV ...	24
{ LXI. ..	27
Application for summons of, LXVI. ...	28
The party is responsible for W.'s attendance. 255.	...
But he must have fixed time given him. 257.	...
Procedure in regard to, &c. LXVII. ..	..
Law as to Plaintiff summoned as a Witness. 256.	. .
Case dismissed for non-attendance of Plaintiff's servants, summoned by Defendant as witnesses, &c. 258. ...	...
WRIT—(*See* WARRANT.)	
WRITTEN Statement of defence. LIX. ...	27
—AUTHORITY to distrain to se vant. CXX.	38
—DEMAND before distraint. CXVI. ...	...
ZAR-I-PESHGI leaseholder cannot be ejected by Collector. XXV.	19
Nor does suit lie to Collector to cancel his lease. 161 *B.*	15
ZEMINDAR—(*See* LANDHOLDER.)	

NOMINAL INDEX OF CASES QUOTED

N. B. *The name quoted is that of the Appellant, whether* PLAINTIFF *or* DEFENDANT. *The Index is of Proper Names:—not of titles such as Rájá, Máhdrájá, Bábú, Náwáb, Maulavy, Mussamat, Messrs., &c. The letters following the name in the Index indicate the publications in which the cases are reported as follows:—*

(C.)—The Board's Circular Orders No. 5A, dated 17th January 1862 &c.
(H.)—Hay and Cos., "Civil Cases."
(J.)—Revenue and Police Journal.
(M.)—Marshall's Reports.
(N.)—Newspaper Report.

Where no letter follows a name, the Report will be found among the Selected Cases now being published periodically by the Board of Revenue, and in the "Revenue and Police Journal" also. The number is that of the abstract.

Page.

Abdul Ali, Maulavy. (C) (H) 105. 12
Abdul Ghani, Khwaja, (H) 111. ... ...
Abdul Hussain Khan, Khwaja, 23rd May, 1862. (H) 131 13
——————22nd August, 1864. 134A. ...
Adhya Prasád Chakravartti. (J) 169. 16
Adwaitya Chandra Pál. (H) (M.,) 125. 13
Afsar-ud-dín (M) 95 A. 11
Ahmad Razá, Sayad. 265. 30
Ahmuty, Robert. 104. 12
Ajodhyá Prasád. (H) (M) 114. 13
Akbár-un-Nisá, Mussamat. 145A. 14
Alam Chandra Saha 167. 16
Amrita Choudhary (20th March, 1863.) (H) 14). ... 14
——————8th May, 1864. 144. ... ...
Anand Máyí Dási. (M) 293. 33
Anand Mohan Ghose. (27th March, 1862). (C) 264.... 30
——————11th August, 1864. 40 A. .. 5
Anna Purná Dásí. 17 A 44. ... ... 2, 6
Asghar Ali Choudhary. 82. 11
Attápái Mullà Shékh. (H) (M) 122. 13
Azíz Ahmad Ghází. (H) 263. 30
Azíz-un-Nissà Bibí. (H) 256. 28
Bagram, J. G. 238. 278. ... ... 22, 28
Baidya Náth Tewárí. 174. 16
Barry, G. R., 101 12
Beckwith, John, (H) (M) 60 9
Beni Rám, Bábú, 14 B 2
Bhagavatí Devyá (C) 271... 30
Bhava Sundari, Rani 195. 18
Bhoja Harí Dhárá Singh. (H) 312. 46
Bhyrav Náth Sandyál, 24th December, 1863. (J) 20. 8
——————2nd July, 1864. 12. 2
Bilas Maní, (H) (M) 242. 23
Bipra Das Dé. 53. 8
Bishwambhar Missar. (H) (M.,) 223. 20
Bishwambhar Pal. (H) (M) 37. 5
Bishwa Rup Dutt. 160. 15
Bola Nath Ghose. 17C. 2
Bolai Chundra Dutt. 315. 40
Brindaban Chandra Choudhary. 19. 3
Burdwan, Maharaja of. 95. 11
Buzurg Chaman. 91. 11
Bykunt Ram Sahú. 311. 45
Chandra, Mussamat. 149. 15
Chandra Kanth Mukharjya, 14th August, 1863. (J). 38. 51. ... ... 5, 7
——————31st March, 1864, 156... 15
Chandra Kumar Ray, 30th June, 1864 88. 11
——————12th July, 1864 150. 15
Chandra Náth Ray. 84. 11
Chandra Sikhar Dé. 173. 16
Chatourí Missar. (H) 276. 31
Chattu Nath Singh. (H) (M) 155. 15
Choudhary Chattra Pal Singh. (M.) 242 B. 23
Cohn, Feilman and Co., Messrs (H) 75, 117, 294. ...10. 13. 35
Collector of Rajshahye, 175. 235. ... ... 13, 22
Courjon, J. A., 153. 15
Dakhina Mohan Ray Choudhary. (J.) 43. 5
Dalrymple, J. (H.) 130 13
Dasha Ráti Patnaik. (H.) 212. 19
Dayal Chandra Ghose (H.) (M.) 194. 18
Devendra Nath Ray Choudhary, (H.) (M.) 92. ... 11
Devi Bhakat. 218. 19
Devi Dutt Choudhary. 151. B. 15
Dhan Singh. 41. 5
Dhanpat Singh. 113. 13
Dhanpat Singh, Babu, 7, 9, 49, 66, 284. ... 2, 8, 9. 31
Dharm Lal Singh. 143. 14

Page

Digambar Mittra. 28A. 4
Digambarí Devya, 67. 178. ... ... 10, 16
Dín Dayal Agastí. 42 A. 5
Dín Dayal Parmanik, (H) (M.) 138. 14
Dina Nath Mallik. 48A. 8
Din Nath Mukharjya (N) 307. 45
Durga Mahtún, (H) (M) 6. 15. 2
Durga Náth Mujumdar. 85. 11
Durga Prasad Bose, 294. A. 35
Dwarika Nath Samant 229. 21
Forbes, A. T. (J) 39. 5
Forlong, James, 17th November 1862 (H.) (M.) 133. 14
——————(M) 15th May, 1863. 133. B. . . ...
Ganésh Prasad, 198. 18
Gangá Dhar Senapatí. (H.) (M.) 31. 4
Ganga Narayan Sen. 196. 18
Ganga Prasad Singh, (H.) (M) 35. 5
Garland H. W., 133. A. 14
Gayatri Devyá. 135. ... ...
Gilmore, G. L. 22. 3
Giridhari Singh (H) (M.) 89. 11
Gobind Das Mahant, 154 C. 15
Gobind Lal Sil (M) 24 B 3
Golok Chandra Babú (H.) 119. 13
Golok Chandra Ray, (H) (M) 59. 141. ... ... 9, 14
Gopal Chandra Das (J.) 272. 30
Gopal Chandra Roy, 280 31
Gopí Mohan Ghose, (J.) 78. 10
Gour Narayan Lala, 108 B 12
Gour Sundar Choudhary (H.) 25, 74. ... ... 4, 10
Gregory, G., 319. 53
Guru Charan Kumar. 177. 16
Guru Das. 190. 17
Guru Das Roy, Babu 17 2
Guru Prasad Roy, (H.) (M.) 79, 127. ... . 10, 13
Guru Prasad Sirkar, (H.) (M.) 165. 16
Guru Prasanna Ray 141 A. 14
Gya Ram Mandal. (H.) (M) 231. 21
Hallodhar Biswas, (C.) (H.) 305. 45
Haradhan Banarjya, 55. 99 ... ... 8, 12
Hara Mani Choudhrain, 98 12
Hara Mohan, 315 49
Hara Mohan Mukharjya, 18th August, 1861 67A, 317. 10, 52
——————14th September, 1864. 47. A. 50B. .. 8
Harak Pauré, 121 4
Hari Charan Lashkar, 184 13
Hari Har Mukharjya. (M) 1st June, 1863. 151C. 154 17
——————(J) 21st December 1863. 233. ... 15
Hari Nath Ghose (H.) 303. 21
Hari Prasad Mall (H) (M) 128. 44
Hari Prasanna Ray (H) 116 209. 13
Harish Chandra Choudhary (J.) 93. ... ... 15, 19
Harish Chundra Kundu (M) 18. 22. C. 11
Hills, James. 2nd September, 1863 (H.) (M.) (CO. 58A of 1863) 16, 46, 77, 262 . .. 3
——————1st August, 1864, 17. B. 2, 6, 10, 29
——————9th August, 1864, 4. A. 2
Hills, James, Junior, 31A. 1
Hira Lal Bakshi (H) (M.) 120. 4
Hydar Ali, Sayad. 143. 13
Idam, Mussamat, 108. A. 14
Inayat Hussain Rájá. 103. 12
Inayat Ulla, Shekh. 97. .. ..
Indrajit Kunwar Maharani, 19th February, 1863. (H.) (M) 232, 309. 318. 11
——————22nd August, 1864. 60A. ... 21, 45, 52
9

Page.

Ishan Chandra Kar (J) 83. 11
Ishan Chandra Ray (H) 25 74. ... ... 4, 10
Ishwar Chandra Achargya. 128A. 13
Ishwar Chandra Bose (C) 112. ... ...
Ishwar Chandra Ghosal. 151B. 311B. 15 45
Ishwar Chandra Saha. 106.... 12
Ishwar Ghose, 24th September, 1862 C (H)... (M) 45. 6
———17th March. 1864. 47. 7
Ishwari Prasad, Lálá. 142... 14
Jadav Chandra Haldar, (M) 14th May. 1863. 34B. 316B. 4
———30th May. 1864. 32. 4
Jagabandhu Mallik. 178 A. 16
Jagamohan Singh. 200. 18
Ján Ali. 76... 10
Jay Chandra Sarma. 250. 23
Jay Dev Mahapatra. 110 B. 12
Jay Durga Devya (H) 166. 283 ... ... 16 31
Jay Kishn Mukharjyá 31st July, 1861 (C) (H) 72.... 10
———31st March, 1862 (C) 73. ... ...
———27th June, 1864. 181. 17
———15th July. 1864. 226-230. ... 21
Jay Kunwar Dbobain. 108. 12
Jay Narayan Bose (H) (M) 159. 15
Jay Nath Nag. 145 B. 14
Jhajá Kunwar, Mussamàt (H) 237. 22
Jivan Lál, Lálá. 205A. 18
Jodhi Singh. 154. 15
Jotán Chandra Ray (H) 261. 29
Jotendra Mohan Thákúr, 3rd January. 1864. 136. ... 14
———11th February, 1864. 152. ... 15
———3rd May. 1864. 252. 26
Kádambari Devyá. 280. A. 31
Kalá Chand Chakravartti (H) 272. 285. 30-31
Kala Chand Kar. 316 A. 51
Kálí Charan Dé (H) (M) 281. 31
Kálí Kishwar Ray (J) 148. 15
Kálí Mohan Roy Choudhary (H) (M) 189. 17
Kálíbar Upádhyay. 162. 15
Kamal Kishn. 201. 18
Kámyáb, Shékh 120. 257... 13-28
Karuna Kanth Chowdhary (H) 168. 16
Karuna Mayi Dasi. 180. 17
Kashishwari Dasi, Rani (J) 242. A. 23
Kena Ram Mallik (J) 228... 21
Kenny, Thonas J. 2nd February, 1864. 56. 8
———4th February, 1864. 33. 4
———30th July, 1864. 294A. 35
Kewajah Chyman, Raja. 50. B. 8
Khetra Nath Das (J) 28. 4
Khuda Bakhsh, Shekh (H) 187. 17
Khyameshwari Devya, Rani. 90. 269. ... ...11, 30
Kirtti Narayan Choudhary (J) 225. 21
Kishn Chandra Biswas. 224. 20
Kishn Dhan Adhikari (H) (M) 1. 69. ... ... 1, 10
Kishn Jivan Bakshi (H) 102. 12
Kishn Sakha Mukharjya (H) (M) 23. 3
Kishta Nath Biwas 224, 251. ....20, 26
Kishta Nath Roy. 236A. 22
Kumar-un-Nissa Bigam (H) 129. 13
Kundra Pradhan (H) 278.... 31
Kuni Ram Purka (J) 206. 18
Kylas Chandra De. 71. 10
Lakhan Magilla, (H) (M) 42. 48. ... ... 5, 8
Lakshmi Devya, Srimati. 186. 17
Laskshmi Narayan Paramanik (H.) 163. 210. ... 15, 19
Laskhmipat Singh, Babú. 240. 22
Latif-un-Nisa Bibí (22nd May, 1862) (H) (M) 2. ... 1
———22nd August, 1862 (H) (M) 14. 193. 310 321. ... ... 2. 17. 45. 54.
———26th March, 1863 (H) 5. 1
Limond, B. C., 54... 8
Madan Mohan Banarjya. 242C. 23
Madan Mohan Ray, 21st August, 1863 (J) 216. ... 19
——— ———27th January, 1864. 241. 22
Madar Khan (H) (M) 172. 16
Madhav Ray, Babu. 180. A. 17
Mahabir Singh. 128. A. 13
Mahatap Chandra, Maharaja (H) (M) 146. 15
Mahesh Chandra Biswas (M.) 161 A. ... ...
Mahesh Chandra Pal Choudhary (H) 211. 266. ... 19, 30
Makbul Hussain. 182. 17
Man Mohan Singh, Raja (H) (M) 12. 2
Manik Mandal Shékh, (J) 90. 11
Matangini Debya. 81... 10
Mathúra Mohan Saha. 21. A. 3
Miyajan Khan Gomashta (J) (M) 243. 259. ... ... 23, 28
Miyajan, Shékh. 230. 21
Mohan Mala, Mussamat (C) 87. 221. ... ... 9, 20

Page.

Mohim, Shékh (H) (M) 36. 100. ... ... 5 12
Mohini, Srimati Rani. 207. 19
Mohini Dasi. 299. 37
Morell, Robert (J) 183. 17
Mubarak Hussain, Shekh (H) 275. 30
Muhammad Ali. 161B. 15
Muhammad Asan Choudhary. 126. 13
Muhammad Dad Khan. 239. 22
Muhammad Hussain, Sayad. 192· A. 17
Muhammad Kadir. 204. 18
Muhammad Khan Kuzalbash, Nawab, Haji, (H) 123. 286. ... ... 13, 31
Muhammad Miyanat-ul-Hak 154 A. 15
Muhammad Muddin, (H) 4. 40. ... ... 1, 5
Muhammad Takí Choudhary, Mir (C) 214. 219. ... 19, 20
Murad Ali (H) 197. 18
Nabi Baksh 234. B. 21
Najíb Shékh (H) 313. 46
Nand Lal Ghose (C) (H) 64. 282. ... ... 9, 31
Nandaza (H) (M) 188. 17
Nara Hari Mahant (H) (M) 44. 190. 248. 314 ...6. 17. 23, 46
Narendra Narayan Bhúp, Maharaja. 31st July, 1861. (C) 260. 29
———July. 1863 (N) 18. 3
Nasar Ali. Shekh. 124. 14
Nathu Ram Sahú 34. 8
Nava Kanth De, 9th September. 1864.
Nava Kumar Bhattachargya 203· 1
Nava Kumar Ghose 222· 297. ... ... 20, 36
Nidhi Das 70 10
Nilmani Singh Deo. (M) 84A. — — — 11
Nityanand Ghose. 80, ... 10
Niyamat Ali, Shékh. (H) 26. 4
Nobin Chandra Ray Sarmma. 56 A. 8
Nobin Kishn Bose. 50 A. ... ...
Núr Muhammad Mandal. 50. ... ...
Panchanan Banarjya (C.) 116. 267. ... ... 13, 30
Parvati Charan Pal (H.) 107 12
Philip, C. J. (N.) 213, 214, 302. ... ... 19, 44
Pir Baksh, Shékh, 28th July, 1862 (H) (M) 164. 287, ... 16, 31
———8th March. 1864 21. 3
Pitambhar Mukharjya. (J) 176. 16
Prabhu Das. Lala 199. 18
Prabhu Das Banarjya 225. 226. 21
Pran Kishn Singh Sarmma, Raja. (C) 306, ... 45
Pran Nath Ray Choudhary. (H) 271, 273. 30
Purnía, Mussamat, 118. 13
Purnima Chowdhrain 139A. 236. ... ... 14, 22
Radha Kanth Dutt. 3. 136. ... ... 1, 14
Raghu Nath Sahay 204A. 299A. 18 42
Rajbhallab Bhanj. (J) 304. 45
Raj Chandra Sarmma Gosain. 185. A.... 17
Raj Kishn Ray 30. 4
Raj Narayan Ray Choudhary. 14C. 2
Raj Rúp Ray. 158. 15
Rakhal Das Mukharjya. 29th April, 1863. (H) 139. ... 14
———9th September, 1863 (J) 147. ... 15
Ram Chandra Bose. (J.) 96. 11
Ram Chandra Choudhary. (J) 311 A. 45
Ram Charan Dutt. 230. 21
Ram Dhan Banarjya. 95. 11
Ram Jivan Bose (H) (M) 27. 4
Ram Jivan Das (J) 62. 9
Ram Kanth Choudhary. 74. 10
Ram Kishn Das (C) 58. 64. 110. 282. ... 9, 12, 31
Ram Kishta Sirkar. 12. 2
Ram Kumar Mukharjya (C) 214. 19
Ram Lal Ghose (M) 14A. 2
Ram Lochan Das. 170. 16
Ram Lochan Dutt 13th July, 1864. 86. 11
———15th July, 1864. 151. 15
Ram Lochan Pál. 17. D. 2
Ram Náráyan Nandi. 52. 8
Ram Narayan Singh. 10. 12. 253. ... ... 2, 27
Ram Nath Lal Bhakat, (J) 2. 1
Ram Nath Ray. 104. 12
Ram Nidhi Baidya, 227 21
Ram Prasad Dé. 234A. ... ...
Ram Sundar Sirkar (H) (M) 308. 45
Rama Nath Ray Choudhary (J) 244. 23
Ramanand Mandal (C) 44. 6
Ramapat Tewary. 130. A.... 13
Ramesh Chandra Dutt. 8. 2
Ramesh Charan Dutt. 317. 52
Rasmani Dasi. 54. A. 8
Rasmani Devya, (H) 24. 3
Ratan Lala (H) (M) 205. 18
Ratan Mani Dasi, 13th February 1863 (H) (M) 171. 16
———16th March 1864. 300. ... 44

	Page.
Rati Kanth Bose (H) (M) 137.	14
Riyaz un-Nissa (J) 11	2
Rup Narayan Singh. (M) 250A..	26
Rushton, 34. A.	26, 4
Salik Ram Upadhyay, 26.87.	4, 11
Salim Shekh (H) (M) 290.	32
Sangat Mahto 185.	17
Sannu Karigar (H) (M) 191.	.
Sarkies, J. C. 296.	36
Saroda Prasad Ray Choudhary (H) (M) 291.	32
Satish Chandra Ray, Maharaja, 215, 220, 295	19, 20, 53
Savi, R, 292.	32
Savi, R, Junior. 289.	..
Sekraj Ray, Babú, 245. 254.	23, 27
Sheo Prasad Choudhary. (J) 279.	31
Sheo Ratan Singh, 63, 217.	9, 19
Shiva Narayan Bhatacharyya (C) 102. 270.	12, 30
Shiva Prasad Chakravartti. 202.	18
Shurkat Ali, Sayad. 109.	12
Sinagapi (H) 61.	9
Sital Kishta Ray. 208A.	19
Sodamini Dasi 236.	22
Solano, R. (H) 23rd December 1862 65 288.	9, 32
——————19th April 1864, 298. 301,	37, 44
Sri Ram Ghose. 94.	11
Sri Ram Ray. (H) (M) 68.	10
Stalkart, John, 23A. 160A.	3, 15
Subhal Singh. 206.	18
Sukh Lal Tewary, 208. 249.	19, 23
Sukhan Sahay. 157.	15
Sukhi Mani Haldar, 4B 17E 12. B. 67A.	1, 2, 5, 10
Surendra Nath Ray. 190. A	17
Surup Chandra Majúmdar 167 A.	16
Suwarna Mayi, Rani. 104 A. 235 A	12, 22
Syama Charan Chakravartti (H) (M) 320.	53
Syama Charan Haldár. (H) 277.	31
Syámá Sundari Dási. (H) (M) 132.	14
Taj Bibi, Mussamát. 173.	16
Tara Chand Potdar. (C) 263.	30
Tara Chand Ray. 30A. 151A	4, 15
Tara Mani Dasi, Mussamat 22B. 167B. 219A. 3,16.	20
Tara Prasad Ray Choudhary. (H) (M) 246.	33
Tarini Prasad Ghose (M) 231.	21
Tikari Ray. (M) 299 (B)	43
Tilok Chand Saha, 255	28
Tripp, H. D., 110 A.	12
Trilokya Charan Choudhary, 86.	11
Uma Nath Ray Choudary. (H) (M) 192.	17
Umarath Devya (C) 247.	23
Umesh Chandra Biswas. 13.	2
Watson &Co., 6th March 1862 (H) 274.	30
——————12th August 1862. (H) (M) 12.	2
——————13th March. 1863. (H) 179.	17
——————10th April 1863. (H) (M) 175.	16
——————6th April 1864. 134.	14
——————7th July 1864. 316.	51
Zahid Ali, Mirza. (H (M) 26 .	30

THE END.

PRINTED AT THE BENGAL CENTRAL PRESS